P 88/989

RULES OF PRACTICE before the UNITED STATES COURT OF APPEALS for the FEDERAL CIRCUIT

Federal Rules of Appellate Procedure
Federal Circuit Rules
Practice Notes
and
Guide for Pro Se Petitioners and Appellants

EFFECTIVE: May 1, 1989

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PREFACE

Here is the information needed to conduct a proceeding in the United States Court of Appeals for the Federal Circuit. Counsel are assumed familiar with it.

Federal Rules of Appellate Procedure

The Federal Rules of Appellate Procedure applicable in this court are reproduced in this boldface type and are indented. The Federal Rules not applicable are indicated by strikeovers. Cite these rules as Fed. R. App. P.

Federal Circuit Rules

The court's own Federal Circuit Rules are printed in this regular type. A court rule implementing a specific Federal Rule follows and bears the same number as the rule implemented. Other court rules concerning procedural matters appear after Fed. R. App. P. 47. Court rules concerning administrative matters appear after Fed. R. App. P. 48. Cite the court's rules as Fed. Cir. R.

Practice Notes

Practice Notes are printed in this special type. Notes follow the rule annotated. They replace the earlier Procedural Handbook. Counsel may rely on the notes but may not use them to avoid controlling statutes or rules, which govern in the event of conflict. Do not cite the notes.

Guide for Pro Se Petitioners and Appellants

The Guide is also printed in this special type. It provides an alternative method for conducting a proceeding in this court for those not represented by counsel. Do not cite the Guide.

Appendix of Forms

Forms prescribed by the Federal Rules of Appellate Procedure and selected Federal Circuit forms are in an appendix. Forms are available from the clerk.

Inquiries and Comments

Telephone inquiries about the rules of practice may be made to the Clerk's Office, (202) 633-6550. Have these rules at hand when you call. Counsel receiving advice by telephone are expected to confirm it in writing to the clerk and to opposing counsel when that advice appears to authorize exceptions to these rules.

Comments on the rules are welcome. Send comments to Clerk, U.S. Court of Appeals for the Federal Circuit, 717 Madison Place, NW., Washington, DC 20439.

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TITLE I. APPLICABILITY OF RULES

Rule 1. Scope of rules

(a) *Scope of rules.* -- These rules govern procedure in appeals to United States courts of appeals from the United States district courts ~~and the United States Tax Court~~; in proceedings in the courts of appeals for review ~~or enforcement~~ of orders of administrative agencies, boards, commissions and officers of the United States; and in applications for writs or other relief which a court of appeals or a judge thereof is competent to give. When these rules provide for the making of a motion or application in the district court, the procedure for making such motion or application shall be in accordance with the practice of the district court.

(b) *Rules not to affect jurisdiction.* -- These rules shall not be construed to extend or limit the jurisdiction of the courts of appeals as established by law.

* * * * *

Rule 1. Scope of rules

As used in any applicable rule, the terms "district court" and "trial court" include the United States district courts, the United States Court of International Trade, the United States Claims Court, and the United States Court of Veterans Appeals, and the term "administrative agency" includes the Board of Patent Appeals and Interferences of the Patent and Trademark Office, the Commissioner of Patents and Trademarks, the Trademark Trial and Appeal Board, the United States International Trade Commission, the Secretary of Commerce acting under headnote 6 to schedule 8, part 4, of the Tariff Schedules of the United States, the Secretary of Agriculture acting under 7 U.S.C. § 2461, the Merit Systems Protection Board, certain arbitrators, the Boards of Contract Appeals in Federal agencies, and the Secretary of Veterans Affairs acting under 38 U.S.C. § 223.

References to the Federal Rules of Civil Procedure include analogous rules of the Court of International Trade and the Claims Court.

Rule 2. Suspension of rules

In the interest of expediting decision, or for other good cause shown, a court of appeals may, except as otherwise provided in Rule 26 (b), suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction.

TITLE II. APPEALS FROM JUDGMENTS AND ORDERS OF DISTRICT COURTS

Rule 3. Appeal as of right -- How taken

(a) *Filing the notice of appeal.* -- **An appeal permitted by law as of right from a district court to a court of appeals shall be taken by filing a notice of appeal with the clerk of the district court within the time allowed by Rule 4. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the court of appeals deems appropriate, which may include dismissal of the appeal. Appeals by permission under 28 U.S.C. § 1292 (b) ~~and appeals by allowance in bankruptcy~~ shall be taken in the manner prescribed by Rule 5 ~~and Rule 6 respectively~~.**

(b) *Joint or consolidated appeals.* -- **If two or more persons are entitled to appeal from a judgment or order of a district court and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the court of appeals upon its own motion or upon motion of a party, or by stipulation of the parties to the several appeals.**

(c) *Content of the notice of appeal.* -- **The notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment, order or part thereof appealed from; and shall name the court to which the appeal is taken. Form 1 in the Appendix of Forms is a suggested form of a notice of appeal. An appeal shall not be dismissed for informality of form or title of the notice of appeal.**

(d) *Service of the notice of appeal.* -- **The clerk of the district court shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant, or, if a party is not represented by counsel, to the last known address of that party; and the clerk shall transmit forthwith a copy of the notice of appeal and of the docket entries to the clerk of the court of appeals named in the notice. ~~When an appeal is taken by a defendant in a criminal case, the clerk shall also serve a copy of the notice of appeal upon the defendant, either by personal service or by mail addressed to the defendant.~~ The clerk shall note on each copy served the date on which the notice of appeal was filed. Failure of the clerk to serve notice shall not affect the validity of the appeal. Service shall be sufficient notwithstanding the death of a party or the party's counsel. The clerk shall note in the docket the names of the parties to whom the clerk mails copies, with the date of mailing.**

(e) *Payment of fees.* -- **Upon the filing of any separate or joint notice of appeal from the district court, the appellant shall pay to the clerk of the district court such fees as are established by statute,**

and also the docket fee prescribed by the Judicial Conference of the United States, the latter to be received by the clerk of the district court on behalf of the court of appeals.

* * * * *

Rule 3. Appeal as of right -- How taken

(a) *Proceeding on appeal as a single appellant.* -- Two or more persons who file separate notices of appeal from the same judgment or order of a trial court and thereafter elect to proceed on appeal as a single appellant shall notify the clerk of the election promptly but in no case later than the earliest date on which a principal brief of any such person is due. The principal brief of persons proceeding as a single appellant shall be due on the latest date on which the principal brief of any such person is due.

(b) *Appeal information sheet; certified copy of docket entries.* -- The clerk of the trial court shall promptly transmit to the clerk of this court the appeal information sheet prescribed by this court. If an opinion accompanied the judgment or order appealed from, the clerk of the trial court shall attach a copy of the opinion to the appeal information sheet. The copy of the docket entries transmitted simultaneously with the notice of appeal and the appeal information sheet shall be certified by the clerk of the trial court.

* * * * *

Practice Note

Failure to file a notice of appeal. Only a party that has filed a notice of appeal may attack all or any part of the judgment of the trial court. Any other party in the trial court not filing a notice of appeal may participate in the appeal as an appellee but may not seek to overturn or modify the judgment.

Fees. The fee schedule is set forth in Fed. Cir. R. 52.

Rule 3.1. Appeals from judgments entered by magistrates in civil cases

When the parties consent to a trial before a magistrate pursuant to 28 U.S.C. § 636 (c) (1), an appeal from a judgment entered upon the direction of a magistrate shall be heard by the court of appeals pursuant to 28 U.S.C. § 636 (c) (3), unless the parties in accordance with 28 U.S.C. § 636 (c) (4), consent to an appeal on the record to a judge of the district court and thereafter, by petition only, to the court of appeals. Appeals to the court of appeals pursuant to 28 U.S.C. § 636 (c) (3) shall be taken in identical fashion as appeals from other judgments of the district court.

Rule 4. Appeal as of right -- When taken

(a) *Appeals in civil cases.* -- (1) In a civil case in which an appeal is permitted by law as of right from a district court to a court

of appeals the notice of appeal required by Rule 3 shall be filed with the clerk of the district court within 30 days after the date of entry of the judgment or order appealed from; but if the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party within 60 days after such entry. If a notice of appeal is mistakenly filed in the court of appeals, the clerk of the court of appeals shall note thereon the date on which it was received and transmit it to the clerk of the district court and it shall be deemed filed in the district court on the date so noted.

(2) Except as provided in (a) (4) of this Rule 4, a notice of appeal filed after the announcement of a decision or order but before the entry of the judgment or order shall be treated as filed after such entry and on the day thereof.

(3) If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days after the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this Rule 4 (a), whichever period last expires.

(4) If a timely motion under the Federal Rules of Civil Procedure is filed in the district court by any party: (i) for judgment under Rule 50 (b); (ii) under Rule 52 (b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (iii) under Rule 59 to alter or amend the judgment; or (iv) under Rule 59 for a new trial, the time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying any other such motion. A notice of appeal filed before the disposition of any of the above motions shall have no effect. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the motion as provided above. No additional fees shall be required for such filing.

(5) The district court, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by this Rule 4 (a). Any such motion which is filed before expiration of the prescribed time may be *ex parte* unless the court otherwise requires. Notice of any such motion which is filed after expiration of the prescribed time shall be given to the other parties in accordance with local rules. No such extension shall exceed 30 days past such prescribed time or 10 days from the date of entry of the order granting the motion, whichever occurs later.

(6) A judgment or order is entered within the meaning of this Rule 4 (a) when it is entered in compliance with Rules 58 and 79 (a) of the Federal Rules of Civil Procedure.

~~**(b) *Appeals in criminal cases.***~~

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Rule 4. Appeal as of right -- When taken

(a) *Trial court mail rule.* -- If, pursuant to statute, the trial court has adopted a rule that deems a document filed on the date it is transmitted by a specified type of mail, a notice of appeal shall be deemed filed as provided in that rule.

(b) *Untimely notice of appeal.* -- The clerk may return a notice of appeal that is untimely on its face.

* * * * *

Practice Note

Time to appeal. This table is provided only as a convenience to counsel, who should refer to the statutes and caselaw before determining the period available for taking an appeal.

Court	*Statute*	*Time*
District Courts	28 U.S.C. § 2107	30 days (60 days if U.S. is a party)
Court of International Trade	28 U.S.C. § 2645 (c)	Same
Claims Court	28 U.S.C. § 2522	Same
Court of Veterans Appeals	38 U.S.C. § 4092	Same

Untimely notice of appeal. The court is not empowered to waive the untimely filing of a notice of appeal.

Certain motions in the trial court. The appellant should promptly notify the clerk if any party in the case files in the trial court a motion of the type enumerated in Fed. R. App. P. 4 (a) (4). Any other party may also notify the clerk when this occurs. The clerk will dismiss an appeal upon learning that a motion that renders the notice of appeal of no effect has been filed in the trial court. If any party has already filed a brief in this court before an appeal is dismissed for this reason, that party may elect to proceed upon the same brief if a new notice of appeal is filed after the trial court acts on the motion. The election must be filed with the clerk within 10 days of receiving the notice of docketing in the second appeal.

Rule 5. Appeals by permission under 28 U.S.C. § 1292 (b)

(a) *Petition for permission to appeal.* -- An appeal from an interlocutory order containing the statement prescribed by 28 U.S.C. § 1292 (b) may be sought by filing a petition for permission to appeal

with the clerk of the court of appeals within 10 days after the entry of such order in the district court with proof of service on all other parties to the action in the district court. An order may be amended to include the prescribed statement at any time, and permission to appeal may be sought within 10 days after entry of the order as amended.

(b) *Content of petition; answer.* -- **The petition shall contain a statement of the facts necessary to an understanding of the controlling question of law determined by the order of the district court; a statement of the question itself; and a statement of the reasons why a substantial basis exists for a difference of opinion on the question and why an immediate appeal may materially advance the termination of the litigation. The petition shall include or have annexed thereto a copy of the order from which appeal is sought and of any findings of fact, conclusions of law and opinion relating thereto. Within 7 days after service of the petition an adverse party may file an answer in opposition. The application and answer shall be submitted without oral argument unless otherwise ordered.**

(c) *Form of papers; number of copies.* -- **All papers may be typewritten. Three copies shall be filed with the original, but the court may require that additional copies be furnished.**

(d) *Grant of permission; cost bond; ~~filing of record~~.* -- **Within 10 days after the entry of an order granting permission to appeal the appellant shall (1) pay to the clerk of the district court the fees established by statute and the docket fee prescribed by the Judicial Conference of the United States and (2) file a bond for costs if required pursuant to Rule 7. The clerk of the district court shall notify the clerk of the court of appeals of the payment of the fees. Upon receipt of such notice the clerk of the court of appeals shall enter the appeal upon the docket. ~~The record shall be transmitted and filed in accordance with Rules 11 and 12 (b).~~ A notice of appeal need not be filed.**

* * * * *

Rule 5. Appeals by permission under 28 U.S.C. § 1292 (b), (c), (d)

The trial court shall retain the record as provided in Rule 11 (e) of the Federal Rules of Appellate Procedure. A certified copy of the docket entries shall be transmitted in lieu of the record.

Rule 5.1 Appeals by permission under 28 U.S.C. § 636 (c) (5)

(a) *Petition for leave to appeal; answer or cross petition.* -- **An appeal from a district court judgment, entered after an appeal pursuant to 28 U.S.C. § 636 (c) (4) to a judge of the district court from a judgment entered upon direction of a magistrate in a civil case, may be sought by filing a petition for leave to appeal. An appeal on petition**

for leave to appeal is not a matter of right, but its allowance is a matter of sound judicial discretion. The petition shall be filed with the clerk of the court of appeals within the time provided by Rule 4 (a) for filing a notice of appeal, with proof of service on all parties to the action in the district court. A notice of appeal need not be filed. Within 14 days after service of the petition, a party may file an answer in opposition or a cross petition.

(b) *Content of petition; answer.* -- The petition for leave to appeal shall contain a statement of the facts necessary to an understanding of the questions to be presented by the appeal; a statement of those questions and of the relief sought; a statement of the reasons why in the opinion of the petitioner the appeal should be allowed; and a copy of the order, decree or judgment complained of and any opinion or memorandum relating thereto. The petition and answer shall be submitted to a panel of judges of the court of appeals without oral argument unless otherwise ordered.

(c) *Form of papers; number of copies.* -- All papers may be typewritten. Three copies shall be filed with the original but the court may require that additional copies be furnished.

(d) *Allowance of the appeal; fees; cost bond; ~~filing of record.~~* - Within 10 days after the entry of an order granting the appeal, the appellant shall (1) pay to the clerk of the district court the fees established by statute and the docket fee prescribed by the Judicial Conference of the United States and (2) file a bond for costs if required pursuant to Rule 7. The clerk of the district court shall notify the clerk of the court of appeals of the payment of the fees. Upon receipt of such notice, the clerk of the court of appeals shall enter the appeal upon the docket. ~~The record shall be transmitted and filed in accordance with Rules 11 and 12 (b).~~

* * * * *

Rule 5.1 Appeals by permission under 28 U.S.C. § 636 (c) (5)

The trial court shall retain the record as provided in Rule 11 (e) of the Federal Rules of Appellate Procedure. A certified copy of the docket entries shall be transmitted in lieu of the record.

~~**Rule 6. Appeals by allowance in bankruptcy proceedings**~~

Rule 7. Bond for costs on appeal in civil cases

The district court may require an appellant to file a bond or provide other security in such form and amount as it finds necessary to ensure payment of costs on appeal in a civil case. The provisions of Rule 8 (b) apply to a surety upon a bond given pursuant to this rule.

Rule 8. Stay or injunction pending appeal

(a) ***Stay must ordinarily be sought in the first instance in district court; motion for stay in court of appeals.*** **-- Application for a stay of the judgment or order of a district court pending appeal or for approval of a supersedeas bond, or for an order suspending, modifying, restoring or granting an injunction during the pendency of an appeal must ordinarily be made in the first instance in the district court. A motion for such relief may be made to the court of appeals or to a judge thereof, but the motion shall show that application to the district court for the relief sought is not practicable, or that the district court has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the district court for its action. The motion shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the motion shall be supported by affidavits or other sworn statements or copies thereof. With the motion shall be filed such parts of the record as are relevant. Reasonable notice of the motion shall be given to all parties. The motion shall be filed with the clerk and normally will be considered by a panel or division of the court, but in exceptional cases where such procedure would be impracticable due to the requirements of time, the application may be made to and considered by a single judge of the court.**

(b) ***Stay may be conditioned upon giving of bond; proceedings against sureties.*** **-- Relief available in the court of appeals under this rule may be conditioned upon the filing of a bond or other appropriate security in the district court. If security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the district court and irrevocably appoints the clerk of the district court as the surety's agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. A surety's liability may be enforced on motion in the district court without the necessity of an independent action. The motion and such notice of the motion as the district court prescribes may be served on the clerk of the district court, who shall forthwith mail copies to the sureties if their addresses are known.**

~~**(c)** ***Stays in criminal cases.***~~

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Rule 8. Stay or injunction pending appeal

An applicant for a stay or injunction pending appeal requesting immediate action by the court shall before filing notify all other parties that an application will be filed and shall utilize an expedited method of service.

* * * * *

Practice Note

An application for a stay or injunction pending appeal will not be accepted by the clerk of this court unless a notice of appeal has been filed with the clerk of the trial court.

~~**Rule 9. Release in criminal cases**~~

Rule 10. The record on appeal

(a) ***Composition of the record on appeal.*** **-- The original papers and exhibits filed in the district court, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the district court shall constitute the record on appeal in all cases.**

(b) ***The transcript of proceedings; duty of appellant to order; notice to appellee if partial transcript is ordered.*** **--**

(1) Within 10 days after filing the notice of appeal the appellant shall order from the reporter a transcript of such parts of the proceedings not already on file as the appellant deems necessary, subject to local rules of the courts of appeals. The order shall be in writing and within the same period a copy shall be filed with the clerk of the district court. ~~**If funding is to come from the United States under the Criminal Justice Act, the order shall so state.**~~ **If no such parts of the proceedings are to be ordered, within the same period the appellant shall file a certificate to that effect.**

(2) If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion.

(3) Unless the entire transcript is to be included, the appellant shall, within the 10 days time provided in (b) (1) of this Rule 10, file a statement of the issues the appellant intends to present on the appeal and shall serve on the appellee a copy of the order or certificate and of the statement. If the appellee deems a transcript or other parts of the proceedings to be necessary, the appellee shall, within 10 days after the service of the order or certificate and the statement of the appellant, file and serve on the appellant a designation of additional parts to be included. Unless within 10 days after service of such designation the appellant has ordered such parts, and has so notified the appellee, the appellee may within the following 10 days either order the parts or move in the district court for an order requiring the appellant to do so.

(4) At the time of ordering, a party must make satisfactory arrangements with the reporter for payment of the cost of the transcript.

(c) *Statement on the evidence or proceedings when no report was made or when the transcript is unavailable.* -- If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement shall be served on the appellee, who may serve objections or proposed amendments thereto within 10 days after service. Thereupon the statement and any objections or proposed amendments shall be submitted to the district court for settlement and approval and as settled and approved shall be included by the clerk of the district court in the record on appeal.

(d) *Agreed statement as the record on appeal.* -- In lieu of the record on appeal as defined in subdivision (a) of this rule, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the district court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, together with such additions as the court may consider necessary fully to present the issues raised by the appeal, shall be approved by the district court and shall then be certified to the court of appeals as the record on appeal and transmitted thereto by the clerk of the district court within the time provided by Rule 11. Copies of the agreed statement may be filed as the appendix required by Rule 30.

(e) *Correction or modification of the record.* -- If any difference arises as to whether the record truly discloses what occurred in the district court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the district court, either before or after the record is transmitted to the court of appeals, or the court of appeals, on proper suggestion or of its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the court of appeals.

* * * * *

Rule 10. The record on appeal

(a) *Transcript purchase order.* -- If a transcript is ordered, the transcript purchase order form prescribed by the court shall be used. The appellant and the court reporter shall comply with the instructions contained on the form.

(b) *Delay in transcript preparation.* -- When a trial transcript has been ordered but is not filed in the trial court within 60 days of the order, the parties

may be directed by the clerk to proceed under Rule 10 (c) or (d) of the Federal Rules of Appellate Procedure.

* * * * *

Practice Note

Using daily transcript copy in lengthy trial proceedings can reduce or eliminate appellate delay in awaiting transcription of the testimony after trial.

Rule 11. Transmission of the record

(a) *Duty of appellant.* -- **After filing the notice of appeal the appellant, or in the event that more than one appeal is taken, each appellant, shall comply with the provisions of Rule 10 (b) and shall take any other action necessary to enable the clerk to assemble and transmit the record. ~~A single record shall be transmitted.~~**

(b) *Duty of reporter to prepare and file transcript; notice to court of appeals; duty of clerk to transmit the record.* -- **Upon receipt of an order for a transcript, the reporter shall acknowledge at the foot of the order the fact that the reporter has received it and the date on which the reporter expects to have the transcript completed and shall transmit the order, so endorsed, to the clerk of the court of appeals. If the transcript cannot be completed within 30 days of receipt of the order the reporter shall request an extension of time from the clerk of the court of appeals and the action of the clerk of the court of appeals shall be entered on the docket and the parties notified. In the event of the failure of the reporter to file the transcript within the time allowed, the clerk of the court of appeals shall notify the district judge and take such other steps as may be directed by the court of appeals. Upon completion of the transcript the reporter shall file it with the clerk of the district court and shall notify the clerk of the court of appeals that the reporter has done so.**

~~When the record is complete for purposes of the appeal, the clerk of the district court shall transmit it forthwith to the clerk of the court of appeals. The clerk of the district court shall number the documents comprising the record and shall transmit with the record a list of documents correspondingly numbered and identified with reasonable definiteness. Documents of unusual bulk or weight, physical exhibits other than documents, and such other parts of the record as the court of appeals may designate by local rule, shall not be transmitted by the clerk unless the clerk is directed to do so by a party or by the clerk of the court of appeals. A party must make advance arrangements with the clerks for the transportation and receipt of exhibits of unusual bulk or weight.~~

~~(c) *Temporary retention of record in district court for use in preparing appellate papers.~~

~~(d) [Abrogated]~~

(e) *Retention of the record in the district court by order of court.* -- **The court of appeals may provide by rule or order that a certified copy of the docket entries shall be transmitted in lieu of the entire record, subject to the right of any party to request at any time during the pendency of the appeal that designated parts of the record be transmitted.**

~~**If the record or any part thereof is required in the district court for use there pending the appeal, the district court may make an order to that effect, and the clerk of the district court shall retain the record or parts thereof subject to the request of the court of appeals, and shall transmit a copy of the order and of the docket entries together with such parts of the original record as the district court shall allow and copies of such parts as the parties may designate.**~~

~~*(f) Stipulation of parties that parts of the record be retained in the district court.*~~

~~*(g) Record for preliminary hearing in the court of appeals.*~~

* * * * *

Rule 11. Transmission of the record

(a) *Retention of the record.* -- The clerk of the district court shall retain the assembled record. A certified copy of docket entries shall be transmitted in lieu of the record. When deemed necessary, this court may order, on motion or sua sponte, transmission of the original or certified copies of the record, or portions thereof, or the physical exhibits, at any time during pendency of the appeal.

The clerk of the district court shall not allow the record to be shipped from the district court for archival storage until the mandate of this court has issued.

(b) *Access of parties and counsel to original record.* --

(1) *Material not subject to a protective order.* -- When a notice of appeal is filed, the clerk of the trial court shall permit a party or counsel for a party to inspect and to copy the nonconfidential original papers, transcripts, and exhibits to prepare the appendix. Such inspection and copying may be subject to reasonable regulation by the trial court.

(2) *Material subject to a protective order.* -- A party or counsel shall be permitted to inspect and to copy material contained in the record governed by a protective order of the trial court in accordance with that order. If this court amends, modifies, or annuls the protective order, pursuant to (c) of this Federal Circuit Rule 11, the access of a party or counsel shall be governed by the order of this court.

(c) *Preservation of protective order on appeal.* -- Material contained in the record on appeal that is subject to a protective order of the trial court shall remain subject to that order, unless this court, on motion or sua sponte, amends, modifies, or annuls the order.

Rule 12. Docketing the appeal; filing of the record

(a) *Docketing the appeal.* -- Upon receipt of the copy of the notice of appeal and of the docket entries, transmitted by the clerk of the district court pursuant to Rule 3 (d), the clerk of the court of appeals shall thereupon enter the appeal upon the docket. An appeal shall be docketed under the title given to the action in the district court, with the appellant identified as such, but if such title does not contain the name of the appellant, the appellant's name, identified as appellant, shall be added to the title.

(b) *Filing the record, partial record, or certificate.* -- Upon receipt of ~~the record transmitted pursuant to Rule 11 (b), or~~ the partial record transmitted pursuant to Rule 11 (e), ~~(f), or (g), or the clerk's certificate under Rule 11 (e),~~ the clerk of the court of appeals shall file it and shall immediately give notice to all parties of the date on which it was filed.

~~**(c) [Abrogated.]**~~

* * * * *

Practice Note

Notice of date of docketing. The clerk will notify all parties, through counsel of record, of the date on which an appeal is docketed.

Official caption; participation in the appeal; consolidation. The clerk will provide the parties with the official caption of the case at the time of docketing. Any objection to the official caption should be made within 10 days of receipt. Parties included in the trial court title having an adverse interest to the appellant but not cross appealing shall be deemed appellees. An appellee desiring not to participate in the appeal may move to withdraw, and, if the motion is granted, the clerk will strike the party's name from the official caption. An appeal in a case that was consolidated in the trial court will be docketed under the title used for the consolidated case. Cross appeals are always consolidated by the clerk. Other appeals may be consolidated on motion or by the court sua sponte.

~~**TITLE III. REVIEW OF DECISIONS OF THE UNITED STATES TAX COURT**~~

~~**Rule 13. Review of decisions of the Tax Court**~~

~~**Rule 14. Applicability of other rules to review of decisions of the Tax Court**~~

TITLE IV. REVIEW ~~AND ENFORCEMENT~~ OF ORDERS OF ADMINISTRATIVE AGENCIES, BOARDS, COMMISSIONS AND OFFICERS

Rule 15. Review ~~or enforcement~~ of agency orders -- How obtained; intervention

(a) *Petition for review of order; joint petition.* -- **Review of an order of an administrative agency, board, commission or officer (hereinafter, the term "agency" shall include agency, board, commission or officer) shall be obtained by filing with the clerk of a court of appeals which is authorized to review such order, within the time prescribed by law, a petition to enjoin, set aside, suspend, modify or otherwise review, or a notice of appeal, whichever form is indicated by the applicable statute (hereinafter, the term "petition for review" shall include a petition to enjoin, set aside, suspend, modify or otherwise review, or a notice of appeal). The petition shall specify the parties seeking review and shall designate the respondent and the order or part thereof to be reviewed. Form 3 in the Appendix of Forms is a suggested form of a petition for review. In each case the agency shall be named respondent. The United States shall also be deemed a respondent if so required by statute, even though not so designated in the petition. If two or more persons are entitled to petition the same court for review of the same order and their interests are such as to make joinder practicable, they may file a joint petition for review and may thereafter proceed as a single petitioner.**

~~**(b)** *Application for enforcement of order; answer; default; cross-application for enforcement.*~~

(c) *Service of petition or application.* -- **A copy of a petition for review ~~or of an application or cross-application for enforcement~~ of an order shall be served by the clerk of the court of appeals on each respondent in the manner prescribed by Rule 3 (d), unless a different manner of service is prescribed by an applicable statute. At the time of filing, the petitioner shall furnish the clerk with a copy of the petition or application for each respondent. At or before the time of filing a petition for review, the petitioner shall serve a copy thereof on all parties who shall have been admitted to participate in the proceedings before the agency other than respondents to be served by the clerk, and shall file with the clerk a list of those so served.**

(d) *Intervention.* -- **Unless an applicable statute provides a different method of intervention, a person who desires to intervene in a proceeding under this rule shall serve upon all parties to the proceeding and file with the clerk of the court of appeals a motion for leave to intervene. The motion shall contain a concise statement of the interest of the moving party and the grounds upon which intervention is sought. A motion for leave to intervene or other notice of**

intervention authorized by an applicable statute shall be filed within 30 days of the date on which the petition for review is filed.

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Rule 15. Review of agency orders -- How obtained

(a) *Notices of appeal and petitions for review; payment of fees; number of copies.* --

(1) *From Patent and Trademark Office.* -- Within the time prescribed by law, the appellant shall file in the Patent and Trademark Office a notice of appeal from a decision of the Board of Patent Appeals and Interferences, the Trademark Trial and Appeal Board, or the Commissioner under 15 U.S.C. § 1071 (a). The appellant shall simultaneously transmit three copies of the notice (on 8 1/2- by 11-inch paper) with the fee prescribed by Federal Circuit Rule 52 to the clerk of this court. The Commissioner shall promptly advise the clerk of the timeliness of the notice.

(2) *From other administrative agencies.* -- Within the time prescribed by law, the petitioner shall file a petition for review of or notice of appeal from a decision or order of an administrative agency with the clerk of this court. Upon filing, the petitioner shall pay to the clerk of this court such fees as are prescribed by Federal Circuit Rule 52.

A petition for review by the Director of the Office of Personnel Management shall be filed according to Federal Circuit Rule 47.11.

(3) *Copies.* -- A petition for review or notice of appeal shall be filed in an original (except when the original is filed in the Patent and Trademark Office under 15 U.S.C. § 1071 (a)) and three copies.

(b) *Docketing appeals and petitions; notice of docketing.* --

(1) *From the Patent and Trademark Office.* -- In appeals from the Board of Patent Appeals and Interferences, the Trademark Trial and Appeal Board, or the Commissioner under 15 U.S.C. § 1071 (a) (2), the clerk of this court shall docket an appeal when the Commissioner of Patents and Trademarks advises that a notice of appeal has been filed by forwarding a copy of the notice of appeal and the certified list required by Federal Circuit Rule 17 (b) (1). If the Commissioner notifies the clerk that the notice of appeal was not timely, the clerk shall order the appellant to show cause why the appeal should not be dismissed, and thereupon refer the response to the court. The clerk shall give notice to all parties of the date on which the appeal was docketed.

(2) *From other administrative agencies.* -- In appeals or petitions for review from administrative agencies other than the Patent and Trademark Office, the clerk of this court shall docket a timely appeal or petition for review upon receipt. The clerk of this court shall give notice to all parties of the date on which the appeal or petition for review was docketed.

(c) *Statement concerning discrimination.* --

(1) *Petitioner's statement.* -- Within 14 days after the date of docketing of a petition for review of a decision of the Merit Systems Protection Board, the petitioner shall serve on the respondent and file with the clerk one of the following statements: (i) No claim of discrimination by reason of race, sex, age, national origin, or handicapped condition has been or will be made in the case; or (ii) Any claim of discrimination by reason of race, sex, age, national origin, or handicapped condition raised before the Board has been abandoned and will not be raised or continued in this or any other court; or (iii) The petition seeks review only of the Board's dismissal of the case for lack of jurisdiction or for untimeliness.

(2) *Response when a claim of discrimination is raised in a motion or brief.* - If the petitioner files a motion or brief maintaining a claim of discrimination as to the case before the court, the respondent shall in a response to the motion or in a responsive brief state one or more of the following: (i) The respondent concurs in the petitioner's statement concerning discrimination; (ii) Any claim of discrimination presented by the petitioner to the Merit Systems Protection Board was frivolous, with the reasons for this statement; or (iii) No evidence of discrimination was presented by the petitioner to the Merit Systems Protection Board. The respondent shall also state, if known, whether a discrimination claim has been filed in a United States district court or in the Equal Employment Opportunity Commission. The respondent shall also include in the response or brief any other information relevant to the statement concerning discrimination.

(d) *Untimely notices of appeal or petitions for review.* -- The clerk may return an appeal or petition for review that is untimely on its face.

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Practice Note

Time to appeal or petition. This table is provided only as a convenience to counsel, who should refer to the statutes, rules, and caselaw before determining the period available for taking an appeal or filing a petition for review. Counsel should also note that the event that causes that period to begin to run varies in each case.

Arbitrator, Board, Commission, Commissioner, or Secretary	*Statute*	*Time*
Arbitrator	5 U.S.C. § 7121, 7703	30 days
Merit Systems Protection Board	5 U.S.C. § 7703	30 days

Board of Patent Appeals and Interferences; Trademark Trial and Appeal Board; Commissioner of Patents and Trademarks	35 U.S.C. § 142 15 U.S.C. § 1071 37 C.F.R. §§ 1.304, 2.145	60 days (30 days after reconsideration; 14 days for cross appeal)
International Trade Commission	19 U.S.C. § 1337	60 days
Board of Contract Appeals	41 U.S.C. § 607 (g)	120 days
Secretary of Commerce	19 U.S.C. § 1202	20 days
Secretary of Agriculture	7 U.S.C. § 2461	60 days
Secretary of Veterans Affairs	38 U.S.C. § 223	As appropriate

Filing in the Patent and Trademark Office. A notice of appeal mailed to the Patent and Trademark Office should be addressed:

Box 8
U.S. Patent & Trademark Office
Washington, DC 20231
Attn: Office of the Solicitor

The Solicitor requests that hand delivery, if any, be made to the Office of the Solicitor, Patent and Trademark Office, Crystal Plaza, Building 2, Room 5-C-15, 2011 Jefferson Davis Highway, Arlington, Virginia, between the hours of 8:30 a.m. and 5:00 p.m.

Copy of decision. A party filing a petition for review or notice of appeal is urged to attach a copy of the order of the board or commission for which review is sought.

Intervention. A party having the right to appeal or to petition for review may not in lieu of exercising those rights intervene seeking relief in its own cause in another's appeal or petition for review. Because the United States or an agency or officer thereof is the only appellee or respondent in cases under this rule, other parties seeking to intervene on the side of the appellee or respondent must move to intervene within 30 days of the date on which the petition for review or notice of appeal was filed. A motion for leave to intervene out of time will be granted only in extraordinary circumstances.

Statement concerning discrimination. A discrimination statement form with a preaddressed, postage-paid, return envelope will be provided to all petitioners seeking review of a decision of the Merit Systems Protection Board. Failure to

complete and return the statement concerning discrimination will result in the dismissal of a petition for review.

Timeliness. Except in inter partes appeals from decisions of the Board of Patent Appeals and Interferences or the Trademark Trial and Appeal Board, parties in agency proceedings do not have the 14-day "cross appeal" period that Fed. R. App. P. 4 (a) (3) grants to parties appealing from trial courts. The court is without authority to waive the statutory time requirements for filing a notice of appeal or petition for review.

Consolidation. When adverse parties file petitions for review or notices of appeal from the same decision or order, the clerk will consolidate the cases, which shall follow the rules for cross appeals. Other cases may be consolidated on motion or by the court sua sponte.

~~**Rule 15.1 Briefs and oral argument in National Labor Relations Board proceedings**~~

Rule 16. The record on review ~~or enforcement~~

(a) *Composition of the record.* **-- The order sought to be reviewed ~~or enforced~~, the findings or report on which it is based, and the pleadings, evidence and proceedings before the agency shall constitute the record on review in proceedings to review ~~or enforce~~ the order of an agency.**

(b) *Omissions from or misstatements in the record.* **-- If anything material to any party is omitted from the record or is misstated therein, the parties may at any time supply the omission or correct the misstatement by stipulation, or the court may at any time direct that the omission or misstatement be corrected and, if necessary, that a supplemental record be prepared and filed.**

Rule 17. Filing of the record

~~**(a) *Agency to file; time for filing; notice of filing.* -- The agency shall file the record with the clerk of the court of appeals within 40 days after service upon it of the petition for review unless a different time is provided by the statute authorizing review. In enforcement proceedings the agency shall file the record within 40 days after filing an application for enforcement, but the record need not be filed unless the respondent has filed an answer contesting enforcement of the order, or unless the court otherwise orders. The court may shorten or extend the time above prescribed. The clerk shall give notice to all parties of the date on which the record is filed.**~~

(b) *Filing -- What constitutes.* **-- The agency may file ~~the entire record or such parts thereof as the parties may designate by stipulation filed with the agency. The original papers in the agency proceeding or certified copies thereof may be filed. Instead of filing the record or designated parts thereof, the agency may file~~ a certified list**

of all documents, transcripts of testimony, exhibits and other material comprising the record, or a list of such parts thereof as the parties may designate, adequately describing each, and the filing of the certified list shall constitute filing of the record. The ~~parties may stipulate that neither the record nor a certified list be filed with the court. The stipulation shall be filed with the clerk of the court of appeals and the date of its filing shall be deemed the date on which the record is filed. If a certified list is filed, or if the parties designate only parts of the record for filing or stipulate that neither the record nor a certified list be filed, the~~ agency shall retain the record ~~or parts thereof. Upon request of the court or the request of a party, the record or any part thereof thus retained shall be transmitted to the court notwithstanding any prior stipulation.~~ All parts of the record retained by the agency shall be a part of the record on review for all purposes.

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Rule 17. Filing of the record

(a) *Retention of the record.* -- The administrative agency, board, commission, or arbitrator shall retain the record. A certified list shall be transmitted in lieu of the record. When deemed necessary, this court may, on motion or sua sponte, order transmission of the original or certified copies of the record, or portions thereof, or the physical exhibits, at any time during pendency of the appeal.

(b) *Certified list.* --

(1) *From the Patent and Trademark Office.* -- Upon receiving the notice of appeal, the Commissioner shall promptly, but no later than 40 days following receipt of the notice, transmit to the clerk the certified list (accompanied by a copy of the decision or order appealed), which shall constitute compliance with the requirement of 35 U.S.C. § 143 and 15 U.S.C. § 1071 (a) (3) for transmitting a certified record to the court.

(2) *From other administrative agencies.* -- Upon service by the court of the petition or notice of appeal upon the agency, the agency shall promptly, but no later than 40 days following service, transmit the certified list (accompanied by a copy of the decision or order petitioned or appealed) to the clerk.

(c) *Service of certified list by agency.* -- The agency shall serve a copy of the certified list on the parties simultaneously with its transmission to the clerk and provide a certificate of service to the clerk. Such service shall be deemed notice to the parties of the date on which the record was filed.

(d) *Access of parties and counsel to original record.* --

(1) *Material not subject to a protective order.* -- When a notice of appeal or petition for review is filed, the administrative agency shall permit a party or counsel for a party to inspect and to copy the nonconfidential original papers, transcripts,

and exhibits to prepare the appendix. Such inspection and copying may be subject to reasonable regulation by the agency.

(2) *Material subject to a protective order.* -- A party or counsel for a party shall be permitted to inspect and to copy material contained in the record governed by a protective order of an administrative agency in accordance with that order. If this court amends, modifies, or annuls the protective order, pursuant to (e) of this Federal Circuit Rule 17, the access of a party or counsel shall be governed by the order of this court.

(e) *Preservation of protective order on appeal.* -- Material contained in the record on review that is subject to a protective order issued by the administrative agency shall remain subject to that order, unless this court, on motion or sua sponte, amends, modifies, or annuls the order.

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Practice Note

No rule set forth herein requires an agency to provide a party with a written transcript of a hearing at the agency's expense. Any party seeking to obtain a written transcript of a hearing should direct the request to the agency, not the court.

Rule 18. Stay pending review

Application for a stay of a decision or order of an agency pending direct review in the court of appeals shall ordinarily be made in the first instance to the agency. A motion for such relief may be made to the court of appeals or to a judge thereof, but the motion shall show that application to the agency for the relief sought is not practicable, or that application has been made to the agency and denied, with the reasons given by it for denial, or that the action of the agency did not afford the relief which the applicant had requested. The motion shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the motion shall be supported by affidavits or other sworn statements or copies thereof. With the motion shall be filed such parts of the record as are relevant to the relief sought. Reasonable notice of the motion shall be given to all parties to the proceeding in the court of appeals. The court may condition relief under this rule upon the filing of a bond or other appropriate security. The motion shall be filed with the clerk and normally will be considered by a panel or division of the court, but in exceptional cases where such procedure would be impracticable due to the requirements of time, the application may be made to and considered by a single judge of the court.

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Rule 18. Stay pending review

An applicant for a stay pending review requesting immediate action by the court shall before filing notify all other parties that an application will be filed and shall utilize an expedited method of service.

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Practice Note

An application for a stay pending review will not be accepted by the clerk of this court unless a petition for review or a notice of appeal has been filed previously or accompanies the application.

~~**Rule 19. Settlement of judgments enforcing orders**~~

Rule 20. Applicability of other rules to review ~~or enforcement~~ of agency orders

All provisions of these rules are applicable to review ~~or enforcement~~ of orders of agencies, except that Rules 3-14 and Rules 22 and 23 are not applicable. As used in any applicable rule, the term "appellant" includes a petitioner and the term "appellee" includes a respondent in proceedings to review ~~or enforce~~ agency orders.

TITLE V. EXTRAORDINARY WRITS

Rule 21. Writs of mandamus and prohibition directed to a judge or judges and other extraordinary writs

(a) *Mandamus or prohibition to a judge or judges; petition for writ; service and filing.* **-- Application for a writ of mandamus or of prohibition directed to a judge or judges shall be made by filing a petition therefor with the clerk of the court of appeals with proof of service on the respondent judge or judges and on all parties to the action in the trial court. The petition shall contain a statement of the facts necessary to an understanding of the issues presented by the application; a statement of the issues presented and of the relief sought; a statement of the reasons why the writ should issue; and copies of any order or opinion or parts of the record which may be essential to an understanding of the matters set forth in the petition. Upon receipt of the prescribed docket fee, the clerk shall docket the petition and submit it to the court.**

(b) *Denial; order directing answer.* **-- If the court is of the opinion that the writ should not be granted, it shall deny the petition. Otherwise, it shall order that an answer to the petition be filed by the respondents within the time fixed by the order. The order shall be served by the clerk on the judge or judges named respondents and on all other parties to the action in the trial court. All parties below other than the petitioner shall also be deemed respondents for all purposes.**

Two or more respondents may answer jointly. If the judge or judges named respondents do not desire to appear in the proceeding, they may so advise the clerk and all parties by letter, but the petition shall not thereby be taken as admitted. The clerk shall advise the parties of the dates on which briefs are to be filed, if briefs are required, and of the date of oral argument. The proceeding shall be given preference over ordinary civil cases.

(c) *Other extraordinary writs.* -- **Application for extraordinary writs other than those provided for in subdivisions (a) and (b) of this rule shall be made by petition filed with the clerk of the court of appeals with proof of service on the parties named as respondents. Proceedings on such application shall conform, so far as is practicable, to the procedure prescribed in subdivisions (a) and (b) of this rule.**

(d) *Form of papers; ~~number of copies~~.* -- **All papers may be typewritten. ~~Three copies shall be filed with the original, but the court may direct that additional copies be furnished.~~**

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Rule 21. Writs of mandamus and prohibition directed to a judge or judges and other extraordinary writs

A petition for writ of mandamus or writ of prohibition shall be entitled simply: "In Re [Name of Petitioner] , Petitioner." Four copies shall be filed with the original, but the court may direct that additional copies be furnished. No response shall be filed by any respondent unless ordered by the court.

TITLE VI. ~~HABEAS CORPUS;~~ PROCEEDINGS IN FORMA PAUPERIS

~~Rule 22. Habeas corpus proceedings~~

~~Rule 23. Custody of prisoners in habeas corpus proceedings~~

Rule 24. Proceedings in forma pauperis

(a) *Leave to proceed on appeal in forma pauperis from district court to court of appeals.* -- **A party to an action in a district court who desires to proceed on appeal in forma pauperis shall file in the district court a motion for leave so to proceed, together with an affidavit, showing, in the detail prescribed by Form 4 of the Appendix of Forms, the party's inability to pay fees and costs or to give security therefor, the party's belief that that party is entitled to redress, and a statement of the issues which that party intends to present on appeal. If the motion is granted, the party may proceed without further application to the court of appeals and without prepayment of fees or costs in either court or the giving of security therefor. If the motion is denied, the district court shall state in writing the reasons for the denial.**

Notwithstanding the provisions of the preceding paragraph, a party who has been permitted to proceed in an action in the district court in forma pauperis, ~~or who has been permitted to proceed there as one who is financially unable to obtain adequate defense in a criminal case,~~ may proceed on appeal in forma pauperis without further authorization unless, before or after the notice of appeal is filed, the district court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed, in which event the district court shall state in writing the reasons for such certification or finding.

If a motion for leave to proceed on appeal in forma pauperis is denied by the district court, or if the district court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled to proceed in forma pauperis, the clerk shall forthwith serve notice of such action. A motion for leave so to proceed may be filed in the court of appeals within 30 days after service of notice of the action of the district court. The motion shall be accompanied by a copy of the affidavit filed in the district court, or by the affidavit prescribed by the first paragraph of this subdivision if no affidavit has been filed in the district court, and by a copy of the statement of reasons given by the district court for its action.

(b) ***Leave to proceed on appeal or review in forma pauperis in administrative agency proceedings.*** **-- A party to a proceeding before an administrative agency, board, commission or officer ~~(including, for the purpose of this rule, the United States Tax Court)~~ who desires to proceed on appeal or review in a court of appeals in forma pauperis, when such appeal or review may be had directly in a court of appeals, shall file in the court of appeals a motion for leave so to proceed, together with the affidavit prescribed by the first paragraph of (a) of this Rule 24.**

(c) ***Form of briefs, appendices and other papers.*** **-- Parties allowed to proceed in forma pauperis may file briefs, appendices and other papers in typewritten form, and may request that the appeal be heard on the original record without the necessity of reproducing parts thereof in any form.**

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Rule 24. Proceedings in forma pauperis

The motion and affidavit for leave to proceed in forma pauperis shall be made on the form prescribed by the court.

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Practice Note

Docketing fee; transcript requests. Parties allowed to proceed in forma pauperis on appeal are not required to pay the docketing fee. Requests for a transcript of agency proceedings at government expense are governed by agency regulations and must be directed to the agency.

Proceeding on original record. Requests that an appeal be heard on the original record are rarely granted because the available informal brief procedure permits an appendix consisting only of a copy of the decision or order sought to be reviewed.

No appointment of counsel. The court has no procedure to appoint counsel for any party.

TITLE VII. GENERAL PROVISIONS

Rule 25. Filing and service

(a) *Filing.* -- Papers required or permitted to be filed in a court of appeals shall be filed with the clerk. Filing may be accomplished by mail addressed to the clerk, but filing shall not be timely unless the papers are received by the clerk within the time fixed for filing, except that briefs and appendices shall be deemed filed on the day of mailing if the most expeditious form of delivery by mail, excepting special delivery, is utilized. If a motion requests relief which may be granted by a single judge, the judge may permit the motion to be filed with the judge, in which event the judge shall note thereon the date of filing and shall thereafter transmit it to the clerk.

(b) *Service of all papers required.* -- Copies of all papers filed by any party and not required by these rules to be served by the clerk shall, at or before the time of filing, be served by a party or person acting for that party on all other parties to the appeal or review. Service on a party represented by counsel shall be made on counsel.

(c) *Manner of service.* -- Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.

(d) *Proof of Service.* -- Papers presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the person served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. The clerk may permit papers to be filed without acknowledgment or proof of service but shall require such to be filed promptly thereafter.

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The proof of service shall contain the mailing addresses of the persons served.

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Practice Note

Location of Clerk's Office; hours of operation; night box; commercial delivery service. The Clerk's Office is in room 401 of the National Courts Building, 717 Madison Place NW., Washington, DC 20439, and is open from 8:30 a.m. to 4:30 p.m. After the office has closed on workdays, papers may be deposited until midnight in a night box at the garage entrance on H Street, NW., between 15th Street and Madison Place, Washington, DC. In lieu of using the night box, a party may deposit the briefs and appendices to be filed with a commercial delivery service before midnight on the day for filing under terms calling for delivery on the next business day in order to avoid mail delays, and they will be considered timely filed.

Clerk's mailing address. Address mail as follows:

Clerk
U.S. Court of Appeals for the Federal Circuit
717 Madison Place NW.
Washington, DC 20439

The clerk will not pay postage due.

Expedited service by counsel. Counsel are urged to agree to serve each other by express mail or other expedited methods. Overnight delivery services are considered mail for the purposes of Fed. R. App. P. 25 (a).

Facsimile communications; special requirement for the certificate or proof of service. As a convenience to counsel, facsimile transmissions to the clerk and the parties of motions, responses to motions, and letters (not notices of appeal, petitions for review, briefs, appendices, citations of supplemental authority, or petitions for rehearing) are permitted. They should be directed to the clerk at (202) 523-0072. However, facsimile transmissions will not be filed unless the certificate of service by facsimile transmission represents that the appropriate number of copies of the document have been mailed (or shipped) for overnight delivery to the clerk and the parties on the next business day. Facsimile transmission of motions and responses to motions between counsel is considered personal service.

Return copy marked received. When briefs or other papers presented for filing include an extra copy, the clerk will mark it received and return it on request. If the filing is by mail or if the night box is used, a self-addressed, postage-paid, return envelope must accompany the request.

Rule 26. Computation and extension of time

(a) *Computation of time.* -- In computing any period of time prescribed by these rules, by an order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period extends until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule "legal holiday" includes New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States. It shall also include a day appointed as a holiday by the state wherein the district court which rendered the judgment or order which is or may be appealed from is situated, or by the state wherein the principal office of the clerk of the court of appeals in which the appeal is pending is located.

(b) *Enlargement of time.* -- The court for good cause shown may upon motion enlarge the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of such time; but the court may not enlarge the time for filing a notice of appeal, a petition for allowance, or a petition for permission to appeal. Nor may the court enlarge the time prescribed by law for filing a petition to ~~enjoin, set aside, suspend, modify, enforce or otherwise~~ review, or a notice of appeal from, an order of an administrative agency, board, commission or officer of the United States, except as specifically authorized by law.

(c) *Additional time after service by mail.* -- Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon that party and the paper is served by mail, 3 days shall be added to the prescribed period.

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Rule 26. Computation and extension of time

Absent extraordinary circumstances that must be described in an accompanying affidavit, a motion to enlarge the time prescribed by the rules or by order of the court for doing any act must be made at least 7 days before the date sought to be extended, except a motion to enlarge the time to respond to a motion must be made at least 5 days before the date sought to be extended. The movant shall before filing advise all other parties that an enlargement will be sought and shall state in the motion whether the other parties object and, if so, whether a response in opposition will be filed. In addition to showing good cause, the movant shall state in every motion for enlargement: (1) the date to be extended, (2) the

revised date sought, (3) the number of days of enlargement sought, and (4) the total number of days of enlargement previously granted to the movant.

* * * * *

Practice Note

Enlargements of time must be justified; affidavit; opposition. Because Federal Circuit Rules provide more generous periods for filing briefs than the Federal Rules of Appellate Procedure, the court will not grant prolonged enlargements of time except under unusual circumstances creative of hardship. Counsel's conflicts with proceedings in other courts or agencies, other than the Supreme Court, do not ordinarily justify delay of the proceedings in this court. An enlargement granted to one party is not justification for an enlargement to other parties. Requests for enlargements of more than 14 days must be accompanied by an affidavit of counsel. A party opposing an enlargement must do so promptly upon learning of the request for that enlargement.

Enlargements during settlement negotiations; stipulations of dismissal without prejudice pending settlement. Parties jointly stipulating that they are actively pursuing a settlement of the case will be granted a reasonable enlargement of time to accomplish settlement. The parties may also stipulate to dismiss the appeal pending settlement negotiations, with the appellant reserving the right to reinstate the appeal on notice to the clerk that the settlement negotiations have failed.

Rule 27. Motions

(a) *Content of motions; response; ~~reply~~.* -- **Unless another form is elsewhere prescribed by these rules, an application for an order or other relief shall be made by filing a motion for such order or relief with proof of service on all other parties. The motion shall contain or be accompanied by any matter required by a specific provision of these rules governing such a motion, shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. Any party may file a response in opposition to a motion other than one for a procedural order [for which see subdivision (b)] within 7 days after service of the motion, but motions authorized by Rules 8, 9, 18 and 41 may be acted upon after reasonable notice, and the court may shorten or extend the time for responding to any motion.**

(b) *Determination of motions for procedural orders.* -- **Notwithstanding the provisions of (a) of this Rule 27 as to motions generally, motions for procedural orders, including any motion under Rule 26 (b), may be acted upon at any time, without awaiting a response thereto, and pursuant to rule or order of the court, motions for specified types of procedural orders may be disposed of by the clerk. Any party adversely affected by such action may by application**

to the court request consideration, vacation or modification of such action.

(c) *Power of a single judge to entertain motions.* -- In addition to the authority expressly conferred by these rules or by law, a single judge of a court of appeals may entertain and may grant or deny any request for relief which under these rules may properly be sought by motion, except that a single judge may not dismiss or otherwise determine an appeal or other proceeding, and except that a court of appeals may provide by order or rule that any motion or class of motions must be acted upon by the court. The action of a single judge may be reviewed by the court.

(d) *Form of papers; number of copies.* -- All papers relating to motions may be typewritten. Three copies shall be filed with the original, but the court may require that additional copies be furnished.

* * * * *

Rule 27. Motions

(a) *Content of motions.* --

(1) A motion or a response to a motion shall be on 8 1/2- x 11-inch paper, without backing.

(2) The certificate of interest (see Fed. Cir. R. 47.4) shall be included in each motion or response other than the motions enumerated in (d) of this Federal Circuit Rule 27.

(3) If the facts relied on in a motion or a response are subject to dispute, an affidavit shall accompany the motion.

(4) The movant shall state in the motion that movant has discussed the motion with the other parties, whether any party will object, and whether any party will file a response. A party withholding consent at the time a motion is filed shall nevertheless be deemed to have consented to the relief requested if that party fails to file a response within the time permitted by Rule 27 (a) of the Federal Rules of Appellate Procedure.

(5) Unopposed procedural motions shall be accompanied by a proposed order incorporating a service list containing both names and addresses.

(b) *Motion to strike.* -- A motion to strike a brief or portions thereof, except to strike scandalous matter, is prohibited so long as the party seeking to strike has the right to file a responsive brief in which the objection could be made.

(c) *Motion to dismiss or to remand.* -- A motion to dismiss for lack of jurisdiction or to remand should be made as soon after docketing as the grounds therefor are known. After the appellant or petitioner has filed the principal brief, the arguments supporting dismissal for lack of jurisdiction or remand should be

made in the brief of the appellee or respondent. Joint or unopposed motions or stipulations to dismiss or to remand may be made at any time.

(d) *Delegation of authority to the clerk.* -- The clerk is authorized to act on motions, if consented to or unopposed, that seek to:

(1) Dismiss an appeal, petition for review, or application for an extraordinary writ, with or without prejudice to reinstatement;

(2) Remand or transfer a case;

(3) Reinstate a case that was dismissed for failure to comply with the rules;

(4) Enlarge for not more than 14 days the time for taking any action required or permitted by the rules or an order of the court;

(5) Enlarge the time for a court reporter to file the transcript of the trial proceedings with the clerk of the district court;

(6) Stay issuance of a mandate pending application to the Supreme Court of the United States for a writ of certiorari for a period not to exceed 30 days;

(7) Consolidate appeals;

(8) Correct a brief or other paper;

(9) Correct or modify record in accordance with Rules 10 (e) or 16 (b) of the Federal Rules of Appellate Procedure;

(10) Grant an amicus curiae leave to participate in oral argument by sharing time with other counsel;

(11) Stay further proceedings;

(12) Withdraw or substitute an appearance or a party;

(13) Advance or continue a case; or

(14) File a supplemental appendix of material inadvertently omitted from the joint appendix.

(e) *Ex parte applications.* -- Neither the court nor any judge of the court will conduct an ex parte hearing on an application for relief.

(f) *Copies.* -- Motions and responses shall be filed in an original and 15 copies when the appeal is pending before the court in banc.

* * * * *

Practice Note

Affidavit. An unsworn declaration under penalty of perjury pursuant to 28 U.S.C. § 1746 may be used in lieu of a required affidavit.

Moot response. A response to a motion for a procedural order that is received after the motion has been acted upon will be considered moot.

Movant's reply not permitted. A movant is not entitled to reply to a response to a motion. The clerk will return any such reply if it is not accompanied by a motion seeking leave to file it that describes with particularity the extraordinary circumstances requiring such a reply.

Limitations on consent motions. Neither the court nor the clerk is required to grant relief from the rules solely because the parties are in agreement that it should be granted. The clerk's authority to act on certain motions includes the authority to grant the relief requested in whole or part or to refer the motion to a judge or a panel. Once a case is assigned to a panel, the clerk refers all motions to the panel.

Rule 28. Briefs

(a) *Brief of the appellant.* -- The brief of the appellant shall contain under appropriate headings ~~and in the order here indicated~~:

(1) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the brief where they are cited.

(2) A statement of the issues presented for review.

(3) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the court below. There shall follow a statement of the facts relevant to the issues presented for review, with appropriate references to the record (see subdivision (e)).

(4) An argument. The argument ~~may~~ be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on.

(5) A short conclusion stating the precise relief sought.

(b) *Brief of the appellee.* -- The brief of the appellee shall conform to the requirements of subdivision (a) (1) - (4), except that a statement of the issues or of the case need not be made unless the appellee is dissatisfied with the statement of the appellant.

(c) *Reply brief.* -- The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the

appellee may file a brief in reply to the response of the appellant to the issues presented by the cross appeal. No further briefs may be filed except with leave of court. All reply briefs shall contain a table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the reply brief where they are cited.

(d) *References in briefs to parties.* -- **Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as "appellant" and "appellee". It promotes clarity to use the designations used in the lower court or in the agency proceedings, or the actual names of parties, or descriptive terms such as "the employee," "the injured person," "the taxpayer," "the ship," "the stevedore," etc.**

(e) *References in briefs to the record.* -- **References in the briefs to parts of the record reproduced in the appendix filed with the brief of the appellant (see Rule 30 (a)) shall be to the pages of the appendix at which those parts appear. If ~~the appendix is prepared after the briefs are filed, references in the briefs to the record shall be made by one of the methods allowed by Rule 30 (e). If the record is reproduced in accordance with the provisions of Rule 30 (f), or if~~ references are made in the briefs to parts of the record not reproduced, the references shall be to the pages of the parts of the record involved; e.g., Answer p. 7, Motion for Judgment p. 2, Transcript p. 231. Intelligible abbreviations may be used. If reference is made to evidence the admissibility of which is in controversy, reference shall be made to the pages of the appendix or of the transcript at which the evidence was identified, offered, and received or rejected.**

(f) *Reproduction of statutes, rules, regulations, etc.* -- **If determination of the issues presented requires the study of statutes, rules, regulations, etc. or relevant parts thereof, they shall be reproduced in the brief or in an addendum at the end, or they may be supplied to the court in pamphlet form.**

(g) *Length of briefs.* -- **Except by permission of the court, or as specified by local rule of the court of appeals, principal briefs shall not exceed 50 pages, and reply briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, etc.**

~~(h) *Briefs in cases involving cross appeals.* If a cross appeal is filed, the plaintiff in the court below shall be deemed the appellant for the purposes of this rule and Rules 30 and 31, unless the parties otherwise agree or the court otherwise orders. The brief of the appellee shall contain the issues and argument involved in his appeal as well as the answer to the brief of the appellant.~~

(i) *Briefs in cases involving multiple appellants or appellees.* - **In cases involving more than one appellant or appellee, including cases**

consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

(j) *Citation of supplemental authorities.* -- When pertinent and significant authorities come to the attention of a party after the party's brief has been filed, or after oral argument but before decision, a party may promptly advise the clerk of the court, by letter, with a copy to all counsel, setting forth the citations. There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the letter shall without argument state the reasons for the supplemental citations. Any response shall be made promptly and shall be similarly limited.

* * * * *

Rule 28. Briefs

(a) *Content of briefs; order.* -- Briefs shall contain the following, in the order listed:

(1) The table of contents;

(2) The table of cases, statutes, and other authorities;

(3) The certificate of interest (see Fed. Cir. R. 47.4);

(4) The statement of related cases (see Fed. Cir. R. 47.5);

(5) The statement of jurisdiction (see Fed. Cir. R. 47.6);

(6) The statement concerning attorney fees (see Fed. Cir. R. 47.7), if applicable;

(7) The statement of the issues;

(8) The statement of the case;

(9) The summary of the argument;

(10) The argument;

(11) The conclusion and statement of relief sought; and

(12) The judgment, order or decision in question, and any opinion, memorandum, or findings and conclusions supporting it, as an attachment placed last within the initial brief of the appellant or petitioner. This requirement is met when the appendix is bound with the brief. (See Fed. Cir. R. 30 (c) (1) and - (d) for a duplicative requirement of the appendix.)

(b) *Appellee's statement of the issues and the case.* -- The appellee's statements of the issues and of the case shall be limited to specific areas of disagreement with those of the appellant. Absent disagreement, an appellee shall not include a statement of the issues or of the case in the brief.

(c) *Length of briefs.* -- The items of the brief listed in (1) through (6) and (12) of (a) of this Federal Circuit Rule 28 are excluded from the computation of pages allowed in a brief. If a cross appeal is filed, the appellant's reply brief shall not exceed 35 pages. The court looks with disfavor upon motions to file extended briefs and grants them only for extraordinary reasons. Unless the order of the court granting such a motion provides otherwise, when additional pages are allowed in the principal brief of an appellant, petitioner, or cross appellant, a responsive brief permitted by the rules may contain the same number of additional pages.

(d) *Briefs containing material subject to a protective order.* --

(1) *Two sets of briefs.* -- If a party deems it necessary to refer in a brief to material covered by a protective order, two sets of briefs shall be filed.

(i) *Confidential set; labeling; number of copies.* One set of briefs, consisting of 12 copies of the complete brief, shall be labeled on the cover "confidential" and shall be filed with the court. Each page containing confidential material shall bear a legend so indicating.

(ii) *Nonconfidential set; labeling; number of copies.* The second set of briefs, consisting of five copies from which confidential matter has been deleted, shall be labeled on the cover "nonconfidential" and shall be filed with the court. Each page from which material subject to a protective order has been deleted shall bear a legend so indicating.

(2) *Service.* -- Each party to the appeal shall be served two copies of the nonconfidential brief, and, when permitted by the applicable protective order, two copies of the confidential brief.

(3) *Nonavailability to the public.* -- The confidential brief filed with the court shall be available only to authorized court personnel and shall not be made available to the public.

(e) *Citations.* -- It is preferred that opinions of this court and its predecessors be cited as found in the Federal Reporter, Second Series, and, if reasonably available, the United States Patents Quarterly and the United StatesCourt of Appeals for the Federal Circuit Int'l Trade Cases. Parallel citations to any other reports are discouraged. Examples of acceptable citations follow:

Guotos v. United States, 552 F.2d 992 (Ct.C1. 1976).
In re Sponnable, 405 F.2d 578, 160 USPQ 237 (CCPA 1969).
South Corporation v. United States, 690 F.2d 1368, 215 USPQ 657 (Fed.Cir. 1982).
United States v. Atkinson, 748 F.2d 659, 3 Fed.Cir.(T) 15 (1984).
Doe v. Roe, No. 12-345, slip op. (Fed. Cir. Oct. 1, 1982).

(f) *Briefs in cases involving cross appeals.* -- If a cross appeal is filed, the plaintiff in the court below shall be deemed the appellant for the purposes of Rules 28, 30, and 31 of the Federal Rules of Appellate Procedure and the Federal Circuit Rules when the appeals are docketed simultaneously, unless the parties otherwise agree and notify the clerk before the brief of the appellant becomes due. If an appeal by the defendant has been docketed before the plaintiff's notice of appeal is received from the clerk of the trial court, the defendant will be continued as the appellant, unless the parties otherwise agree or the court on motion directs otherwise. The brief of the cross appellant shall contain the issues and argument involved in the cross appeal as well as the answer to the brief of the appellant.

(g) *Citation of supplemental authorities.* -- A party may, without seeking leave of the court, file and serve an original and six copies of a letter addressed to the court citing supplemental authority. The letter shall refer either to a page of the brief or to a point raised at oral argument and shall state in a single sentence the proposition the authority supports. It shall contain no other argument or explanation. A copy of the authority cited, if not yet published, shall accompany each copy of the letter. The letter shall be filed and served promptly after the enactment or publication of the supplemental authority. Any response shall be filed and served within 7 days of service, and it shall be limited to a short statement of why the authority is considered inapplicable.

(h) *Informal brief.* -- A party appearing without counsel may file an informal brief on the form prescribed by the court. When the appellant or petitioner files an informal brief, the appellee or respondent may elect to file an informal brief. The informal brief filed by an appellee or respondent shall contain a statement of the case but otherwise follow the format prescribed for the pro se party.

(i) *Briefs in transferred cases.* -- When an appeal is transferred by another court of appeals after briefs have been filed, the parties may stipulate to proceed on those briefs in lieu of filing the briefs prescribed by these rules. The stipulation must be filed within 14 days of the date of docketing, and the number of copies of briefs prescribed in Federal Circuit Rule 31 (b) must accompany the stipulation. The court may order supplemental briefs to be filed.

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Practice Note

The informal brief procedure is fully explained in the Guide for Pro Se Petitioners and Appellants.

Rule 29. Brief of an amicus curiae

A brief of an amicus curiae may be filed only if accompanied by written consent of all parties, or by leave of court granted on motion or at the request of the court, except that consent or leave shall not be required when the brief is presented by the United States or an officer or agency thereof, or by a State, Territory or Commonwealth. The brief may be conditionally filed with the motion for leave. A motion for leave

shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. Save as all parties otherwise consent, any amicus curiae shall file its brief within the time allowed the party whose position as to affirmance or reversal the amicus brief will support unless the court for cause shown shall grant leave for later filing, in which event it shall specify within what period an opposing party may answer. A motion of an amicus curiae to participate in the oral argument will be granted only for extraordinary reasons.

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Rule 29. Brief of an amicus curiae

A brief of an amicus curiae shall not exceed 20 pages except by leave of the court. The cover of such a brief shall indicate whether it urges affirmance or reversal of the judgment or order under review. An amicus may not file a reply brief except by leave of the court granted only in extraordinary circumstances.

Rule 30. Appendix to the briefs

(a) *Duty of appellant to prepare and file; content of appendix; time for filing; number of copies.* -- **The appellant shall prepare and file an appendix to the briefs which shall contain: (1) the relevant docket entries in the proceeding below: (2) any relevant portions of the pleadings, charge, findings, or opinion; (3) the judgment, order or decision in question; ~~and (4) any other parts of the record to which the parties wish to direct the particular attention of the court. Except where they have independent relevance, memoranda of law in the district court should not be included in the appendix.~~ The fact that parts of the record are not included in the appendix shall not prevent the parties or the court from relying on such parts.**

~~Unless filing is to be deferred pursuant to the provisions of subdivision (c) of this rule, the appellant shall serve and file the appendix with the brief.~~ ~~Ten~~ copies of the appendix shall be filed with the clerk, and one copy shall be served on counsel for each party separately represented, unless the court shall by rule or order direct the filing or service of a lesser number.

~~(b) *Determination of contents of appendix; cost of producing.* The parties are encouraged to agree as to the contents of the appendix. In the absence of agreement, the appellant shall, not later than 10 days after the date on which the record is filed, serve on the appellee a designation of the parts of the record which the appellant intends to include in the appendix and a statement of the issues which the appellant intends to present for review. If the appellee deems it necessary to direct the particular attention of the court to parts of the record not designated by the appellant, the appellee shall, within 10 days after receipt of the designation, serve upon the appellant a designation of those parts. The appellant shall include in the appendix the parts thus~~

~~designated. In designating parts of the record for inclusion in the appendix, the parties shall have regard for the fact that the entire record is always available to the court for reference and examination and shall not engage in unnecessary designation.~~

Unless the parties otherwise agree, the cost of producing the appendix shall initially be paid by the appellant, ~~but if the appellant considers that parts of the record designated by the appellee for inclusion are unnecessary for the determination of the issues presented the appellant may so advise the appellee and the appellee shall advance the cost of including such parts.~~ The cost of producing the appendix shall be taxed as costs in the case, but if either party shall cause matters to be included in the appendix unnecessarily the court may impose the cost of producing such parts on the party. Each circuit shall provide by local rule for the imposition of sanctions against attorneys who unreasonably and vexatiously increase the costs of litigation through the inclusion of unnecessary material in the appendix.

(c) *Alternative method of designating contents of the appendix; ~~how references to the record may be made in the briefs when alternative method is used.~~* -- If the court shall so provide by rule for classes of cases or by order in specific cases, preparation of the appendix may be deferred until after the briefs have been filed, ~~and the appendix may be filed 21 days after service of the brief of the appellee. If the preparation and filing of the appendix is thus deferred, the provisions of subdivision (b) of this Rule 30 shall apply, except that the designations referred to therein shall be made by each party at the time each brief is served, and a statement of the issues presented shall be unnecessary.~~

~~If the deferred appendix authorized by this subdivision is employed, references in the briefs to the record may be to the pages of the parts of the record involved, in which event the original paging of each part of the record shall be indicated in the appendix by placing in brackets the number of each page at the place in the appendix where that page begins. Or if a party desires to refer in a brief directly to pages of the appendix, that party may serve and file typewritten or page proof copies of the brief within the time required by Rule 31 (a), with appropriate references to the pages of the parts of the record involved. In that event, within 14 days after the appendix is filed the party shall serve and file copies of the brief in the form prescribed by Rule 32 (a) containing references to the pages of the appendix in place of or in addition to the initial references to the pages of the parts of the record involved. No other changes may be made in the brief as initially served and filed, except that typographical errors may be corrected.~~

(d) *Arrangement of the appendix.* -- At the beginning of the appendix there shall be inserted a list of the parts of the record which it contains, in the order in which the parts are set out therein, with references to the pages of the appendix at which each part begins. The relevant docket entries shall be set out following the list of contents. Thereafter, other parts of the record shall be set out in chronological

order. ~~When matter contained in the reporter's transcript of proceedings is set out in the appendix, the page of the transcript at which such matter may be found shall be indicated in brackets immediately before the matter which is set out. Omissions in the text of papers or of the transcripts must be indicated by asterisks.~~ Immaterial formal matters (captions, subscriptions, acknowledgments, etc.) shall be omitted. A question and its answer may be contained in a single paragraph.

(e) *Reproduction of exhibits.* -- **Exhibits designated for inclusion in the appendix may be contained in a separate volume, or volumes, suitably indexed. Four copies thereof shall be filed with the appendix and one copy shall be served on counsel for each party separately represented. The transcript of a proceeding before an administrative agency, board, commission or officer used in an action in the district court shall be regarded as an exhibit for the purpose of this subdivision.**

(f) *Hearing of appeals on the original record without the necessity of an appendix.* -- **A court of appeals may by rule applicable to all cases, or to classes of cases, or by order in specific cases, dispense with the requirement of an appendix and permit appeals to be heard on the original record, with such copies of the record, or relevant parts thereof, as the court may require.**

* * * * *

Rule 30. Appendix to the briefs

(a) *Purpose; content of appendix; time for filing; number of copies; service.* -

(1) *Purpose.* -- The purpose of this rule is to limit the size of the appendix that is actually printed (by any form of duplication) and filed with the court.

(2) *Contents.* -- The mandatory items in Rule 30 (a) (1) - (3) of the Federal Rules of Appellate Procedure shall be included in the appendix. Any unpublished opinion or order cited in accordance with Rule 47.8 (c) of these Federal Circuit Rules shall also be included in the appendix. Parts of the record authorized by Rule 30 (a) (4) of the Federal Rules of Appellate Procedure may not be included in the appendix unless they are actually referenced in the briefs. Indiscriminate referencing in briefs to blocks of record pages and inclusion in the appendix of pages not required to be referenced are prohibited. If the appellant considers that parts of the record have been referenced in violation of this rule the appellant may so advise the appellee and the appellee shall advance the costs of including such parts in the appendix. The following will not be included in the appendix except by leave of the court:

(i) Briefs and memoranda in their entirety (except as otherwise provided in this Federal Circuit Rule 30);

(ii) Notices;

(iii) Subpoenas (except where the enforcement or validity of a subpoena is at issue);

(iv) Summonses (except in appeals from the Court of International Trade);

(v) Motions to extend time;

(vi) Affidavits of service and mailing; and

(vii) Jury lists.

Nothing herein prohibits an examiner's answer in an ex parte patent case, a trademark examining attorney's statement in an ex parte trademark case, or the briefs and memoranda in their entirety in a case where the only issue is the propriety of summary judgment, from being designated and included in the appendix.

(3) *Additional mandatory appendix items in Patent and Trademark Office appeals.* -- In appeals from the Patent and Trademark Office, the appendix shall, unless the parties mutually agree to the contrary, include a copy of all rejected claims in an ex parte patent appeal, a copy of all counts in a patent interference appeal, and both a copy of the trademark sought to be registered or cancelled and a copy of any registration relied upon to refuse or oppose registration or to seek cancellation of a registered mark in an ex parte or an inter partes trademark appeal.

(4) *Time for filing; consequence of failure to file an appendix.* -- Except for an appendix filed under (d) of this Federal Circuit Rule 30 or as part of an informal brief, an appendix shall be filed by the appellant or petitioner within 7 days after the last reply brief is due or filed. If the appellant or petitioner fails to file an appendix, the clerk is authorized to dismiss the case.

(5) *Number of copies.* -- Twelve copies of the appendix must be filed with the court.

(6) *Service.* -- Two copies of the appendix shall be served on counsel for each party separately represented.

(b) *Determination of contents of appendix.* -- The parties are encouraged to agree as to the contents of an appendix that will comply with this Federal Circuit Rule 30. In the absence of agreement, the appellant or petitioner shall, not later than 10 days after the date of docketing in an appeal from a court or after service of the certified list in an appeal or petition for review from an administrative agency, serve on the appellee or respondent a designation of materials from which the appendix will be prepared and a statement of the issues to be presented for review. An appellee or respondent who deems it necessary shall, within 10 days of receipt of the designation, serve on the appellant or petitioner a counterdesignation. No designation or counterdesignation or statement of the issues shall be filed with the court. Within 10 days after the parties have designated that material, the appellant or petitioner shall assign consecutive page numbers to the designated material and shall serve upon all the parties a table

reflecting the page numbers of each item designated. The first page numbers shall be assigned to the judgment or order appealed from and any opinion, memorandum, or findings and conclusions supporting it. If not prohibited expressly or by implication in an outstanding protective order, one copy (which may be in micrographic format) of a physical compilation of the designated material with the assigned page numbers shown thereon may be served upon all the parties in lieu of the table, at the option of the appellant or petitioner. Neither the table of page numbers nor the physical compilation of the designated material shall be filed with the court. If all designated material comprises no more than 100 pages, the provisions of (d) of this Federal Circuit Rule 30 apply.

The time limits set for designating, counterdesignating, and compiling the table may be enlarged by agreement of the parties without seeking leave of the court so long as an enlargement of the time for filing the brief of the appellant is not required. However, if a transcript of the proceedings is required before the material can be designated and if the transcript has been ordered but not completed within the time period prescribed by this rule, the appellant shall move for an extension of time within which to designate the material, attaching an affidavit explaining in detail the steps taken, if any, to expedite transcription of the trial proceedings.

The appellant or petitioner shall prepare the appendix to be filed with the court from the designated material by selecting therefrom only mandatory items and pages specifically referred to in the briefs of the parties. Pages of the designated material not referenced in the briefs (other than the mandatory items) shall be omitted from the appendix filed with the court.

(c) *Arrangement of appendix; pagination.* --

(1) *Arrangement of appendix.* -- Rule 30 (d) of the Federal Rules of Appellate Procedure shall govern the arrangement of the appendix, except the judgment or order appealed from, and any opinion, memorandum, or findings and conclusions supporting it shall be placed first in the appendix before the docket entries. (See Fed. Cir. R. 28 (a) (12) for a duplicative requirement of the initial brief of the appellant or petitioner.)

(2) *Pagination.* -- The page numbers used in the appendix shall be the page numbers assigned by the appellant or petitioner to the designated material in accordance with the subsection (b) of this Federal Circuit Rule 30. The page numbers shall appear centered in the bottom margin of the pages in the appendix. Other pagination marks shall be redacted if necessary to avoid confusion. The materials in the appendix shall be in numerical order according to the page numbers assigned by the appellant or petitioner to the designated materials. Omission of pages need not be noted, e.g., page 102 may be followed by page 230 without stating that pages 103-229 are not reproduced in the appendix. References in the briefs shall be only to the page numbers of the appendix.

(d) *Combined brief and appendix.* -- If all designated material comprises no more than 100 pages, all of it shall be included in the appendix, in which case it shall be bound together with the initial brief of the appellant or petitioner, and the brief shall be filed as provided in Federal Circuit Rule 31 (a).

(e) *Appendix in pro se cases.* -- When an inadequate appendix is filed by an appellant or petitioner appearing pro se, the appellee or respondent may also file with its brief an appendix containing material permitted by (a) (2) of this Federal Circuit Rule 30.

(f) *Separate or supplementa' appendix; color of cover; combined brief and separate or supplemental appendix.* -- If the appellant or petitioner has failed to participate in determining the contents of the appendix or has filed an inadequate appendix, the United States, or an officer or agency therof, as the appellee or respondent, may file a separate or supplemental appendix containing material permitted by (a) (2) of this Federal Circuit Rule 30. The color of the cover shall be red. If the separate or supplemental appendix contains no more than 100 pages, it shall be bound together with the initial brief of the appellee or respondent. Except as provided herein and in (e) of this Federal Circuit Rule 30, no other party may file a separate or supplemental appendix without leave of the court.

(g) *Costs.* -- The costs of the table of page numbers or the copy of the physical compilation of the designated material authorized in (b) of this Federal Circuit Rule 30 and of the appendix, including the separate segments of the appendix authorized in (h) of this Federal Circuit Rule 30, may be assessed as provided in Rule 30 (b) of the Federal Rules of Appellate Procedure.

(h) *Appendices containing material subject to a protective order.* --

(1) *Two sets of appendices.* -- If a party deems it necessary to include materials subject to a protective order in the appendix, two sets of appendices shall be filed.

(i) *Confidential set; labeling; number of copies.* One set of appendices, consisting of 12 copies of the complete appendix, shall be labeled on the cover "confidential" and shall be filed with the court. Each page containing confidential material shall bear a legend so indicating.

(ii) *Nonconfidential set; labeling; number of copies.* The second set of appendices, consisting of five copies from which confidential matter has been deleted, shall be labeled on the cover "nonconfidential" and shall be filed with the court. Each page from which material subject to a protective order has been deleted shall bear a legend so indicating.

(2) *Service.* -- Each party to the appeal shall be served with two copies of the nonconfidential appendix and, when permitted by the applicable protective order, with two copies of the confidential appendix.

(3) *Nonavailability to the public.* -- The confidential appendix filed with the court shall be available only to authorized court personnel and shall not be made available to the public.

(i) *Appendix to informal brief.* -- The appendix to an informal brief shall contain the judgment and opinion of the trial court or the final order of an

administrative agency. The initial decision of the administrative judge shall also be included in the appendix in Merit System Protection Board cases.

* * * * *

Practice Note

General. Preparation of the appendix requires extensive cooperation between the parties. The Federal Circuit Rule, unlike the Federal Rule of Appellate Procedure, does not permit the filing of page proof copies of briefs. An appendix prepared without careful attention to the Federal Circuit Rule may be rejected when tendered for filing and may result in dismissal. A cross appellant will notify the appellant, promptly upon service of the appellant's reply brief, whether the cross appellant's reply brief will or will not contain references to pages not referenced in the briefs already filed and will, in the former instance, list such pages.

Dispensing with appendix. A motion to dispense with the appendix will be granted only in extraordinary circumstances.

Briefs and memoranda. Briefs and memoranda presented to the trial court or administrative agency may not ordinarily be included in the appendix, but individual pages may be included when it is necessary to refer to them in the appellate briefs.

Rule 31. Filing and service of briefs

(a) *Time for serving and filing briefs.* -- The appellant shall serve and file a brief within ~~40~~ days after the date on which the record is filed. The appellee shall serve and file a brief within ~~30~~ days after service of the brief of the appellant. The appellant may serve and file a reply brief within 14 days after service of the brief of the appellee, but, except for good cause shown, a reply brief must be filed at least 3 days before argument. If a court of appeals is prepared to consider cases on the merits promptly after briefs are filed, and its practice is to do so, it may shorten the periods prescribed above for serving and filing briefs, either by rule for all cases or for classes of cases, or by order for specific cases.

(b) *Number of copies to be filed and served.* -- ~~Twenty-five~~ copies of each brief shall be filed with the clerk, unless the court by order in a particular case shall direct a lesser number, and two copies shall be served on counsel for each party separately represented. If a party is allowed to file typewritten ribbon and carbon copies of the brief, the original and three legible copies shall be filed with the clerk, and one copy shall be served on counsel for each party separately represented.

(c) *Consequence of failure to file briefs.* -- If an appellant fails to file a brief within the time provided by this rule, or within the time as extended, an appellee may move for dismissal of the appeal. If an

appellee fails to file a brief, the appellee will not be heard at oral argument except by permission of the court.

* * * * *

Rule 31. Filing and service of briefs

(a) *Time for service and filing; service of certain reply briefs.* -- In appeals from courts, the appellant shall serve and file its initial brief within 60 days after the date upon which the appeal is docketed. In all other cases, the appellant or petitioner shall serve and file its initial brief within 60 days after service of the certified list or the date of docketing, whichever is later. The appellee, respondent, or cross appellant shall serve and file its initial brief within 40 days after service of the brief of the appellant or petitioner. In a cross appeal, the appellant shall serve and file its reply brief within 40 days after service of the brief of the cross appellant, and the cross appellant shall serve and file its reply brief within 14 days after service of the reply brief of the appellant. A reply brief filed within 4 business days of oral argument shall be served in such manner as to reach the addressee before the argument.

(b) *Number of copies.* -- Except for briefs containing material subject to a protective order (see Fed. Cir. R. 28 (d)), 12 copies of each brief shall be filed with the court and 2 copies shall be served on the counsel who is the principal attorney for each party, intervenor, and amicus curiae separately represented.

(c) *Suspension of due date.* -- Motions which, if granted, would terminate the appeal will suspend the due dates for briefs. When such motions are denied, briefs will be due within the balance of the time permitted in this rule, but in no case fewer than 10 days from the date of the order, unless a different due date is set forth in the order.

(d) *Consequence of failure to file a brief by appellant or petitioner.* -- If the appellant or petitioner fails to file a brief, the clerk is authorized to dismiss the case.

(e) *Time for serving and filing informal briefs; number of copies.*--In appeals from courts, a pro se appellant electing to file an informal brief shall serve and file the brief within 21 days after the date upon which the appeal is docketed. In appeals or petitions for review from administrative agencies, the brief shall be filed and served within 21 days after service of the certified list or the date of docketing, whichever is later. An appellee or respondent electing to file an informal brief shall file and serve the brief within 21 days after service of the appellant's or petitioner's brief or within 21 days after service of the certified list pursuant to Rule 17 (c) of these Federal Circuit Rules, whichever occurs later. Any reply brief shall be in letter form not to exceed five typewritten, double-spaced pages in length and shall be served and filed within 10 days after service of the appellee's or respondent's brief. An original and three copies of each brief shall be filed with the court, and one copy shall be served on the other party.

Rule 32. Form of briefs, the appendix and other papers

(a) *Form of briefs and the appendix.* -- Briefs and appendices may be produced by standard typographic printing or by any duplicating or copying process which produces a clear black image on white paper. Carbon copies of briefs and appendices may not be submitted without permission of the court, except in behalf of parties allowed to proceed in forma pauperis. All printed matter must appear in at least 11 point type on opaque, unglazed paper. Briefs and appendices produced by the standard typographic process shall be bound in volumes having ~~pages 6 1/8 by 9 1/4 inches and~~ type 4 1/6 by 7 1/6 inches. Those produced by any other process shall be bound in volumes having pages not exceeding 8 1/2 by 11 inches and type matter not exceeding 6 1/2 by 9 1/2 inches, with double spacing between each line of text. In patent cases the pages of briefs and appendices may be of such size as is necessary to utilize copies of patent documents. Copies of the reporter's transcript and other papers reproduced in a manner authorized by this rule may be inserted in the appendix~~, such pages may be informally renumbered if necessary~~.

~~If briefs are produced by commercial printing or duplicating firms, or, if produced otherwise and the covers to be described are available,~~ the cover of the brief of the appellant should be blue; that of the appellee, red; that of an intervenor or amicus curiae, green; that of any reply brief, gray. The cover of the appendix, if separately printed, should be white. ~~The front covers of the briefs and of appendices, if separately printed, shall contain: (1) the name of the court and the number of the case; (2) the title of the case (see Rule 12 (a)); (3) the nature of the proceeding in the court (e.g., Appeal; Petition for Review) and the name of the court, agency, or board below; (4) the title of the document (e.g.,) Brief for Appellant, Appendix); and (5) the names and addresses of counsel representing the party on whose behalf the document is filed.~~

(b) *Form of other papers.* -- Petitions for rehearing shall be produced in a manner prescribed by subdivision (a). Motions and other papers may be produced in like manner, or they may be typewritten upon opaque, unglazed paper 8 1/2 by 11 inches in size. Lines of typewritten text shall be double spaced. Consecutive sheets shall be attached at the left margin. Carbon copies may be used for filing and service if they are legible.

A motion or other paper addressed to the court shall contain a caption setting forth the name of the court, the title of the case, the file number, and a brief descriptive title indicating the purpose of the paper.

* * * * *

Rule 32. Form of briefs, the appendix and other papers

(a) *Dimensions; single-sided copying; type; page numbers.* -- Briefs shall be bound in volumes having pages 8 1/2 by 11 inches. If a brief is produced by other than the standard typographical process used by commercial printers, type matter shall appear on only one side of the page, shall not exceed 6 1/2 by 9 1/2 inches using 10-pitch (pica) or 11-point proportional spacing or larger type, and except for footnotes and headings shall be double spaced between each line of text using the standard of 6 lines of type per inch. The pages of a brief shall be numbered in the center of the bottom margin, using arabic numerals for the pages subject to the page limitation and lower case roman numerals for all other pages.

(b) *Cover of brief; binding.* -- Briefs shall have a cover of durable quality on both front and back sides and be securely bound along the left-hand margin to ensure that the bound copy will not loosen or fall apart. Briefs should lie flat when open. Ring-type bindings, plastic or metal, or bindings that protrude from the front and back covers of the brief (e.g. VeloBind) are not acceptable. Externally positioned staple ends must be covered with tape.

(c) *Nonconforming briefs.* -- The clerk may refuse to file any brief that has not been printed or bound in conformity with Rule 32 of the Federal Rules of Appellate Procedure and this Federal Circuit Rule 32.

(d) *Format of appendix; pagination; cover and binding.* -- The appendix shall be easily readable and shall substantially conform to Rule 32 of the Federal Rules of Appellate Procedure. All papers shall be 8 1/2 by 11 inches, except as provided in Rule 32 (a) of the Federal Rules of Appellate Procedure. To the extent possible, pages in the appendix should be printed on both sides. The pages of the appendix shall be numbered as prescribed in Rule 30 (c) (2) of these Federal Circuit Rules. When bound separately, the cover and binding shall comply with (b) of this Federal Circuit Rule 32.

(e) *Content of cover.* -- The cover of each brief and appendix shall, from top to bottom, display this information in this order:

(1) The title of the document and the designation of the party for whom it is filed (e.g., Brief for Appellant, Brief for Petitioner and Joint Appendix, Joint Appendix, etc.). The name of the party may follow its designation (e.g., Appellant Jones) when more than one party on a side will be filing a brief;

(2) The name of this court;

(3) The docket number (or numbers) of the case in this court;

(4) The official caption provided by the clerk at the time of docketing;

(5) The nature of the proceedings in this court and the name of the agency, board, or court from which the appeal is taken (e.g., Appeal from the Claims Court) including, where applicable, the name of the judge from whose judgment appeal is taken;

(6) The names, addresses, and telephone numbers of all counsel on the brief and the party on whose behalf the document is filed; and

(7) A black line under each of entries 1 through 5.

(f) *Informal brief.* -- Informal briefs shall be prepared on a form provided by the clerk. The form contains instructions for preparing and filing an informal brief. Informal briefs should be typewritten, but block printing or, as a last resort, legible handwriting is permitted. An informal brief including continuation pages shall not exceed 50 pages of typewritten double-spaced text or its equivalent. Additional information about informal briefs is available in the court's Guide for Pro Se Petitioners and Appellants.

* * * * *

Practice Note

Content of cover. When a brief and appendix are bound together, the cover shall so indicate.

Print size of briefs. Counsel should avoid photoreproduction that reduces the print size of the original smaller than the size required by these rules.

Reply briefs in cross appeals. The covers of reply briefs of both the appellant and the cross appellant should be gray.

Rule 33. Prehearing Conference

The court may direct the attorneys for the parties to appear before the court or a judge thereof for a prehearing conference to consider the simplification of the issues and such other matters as may aid in the disposition of the proceedings by the court. The court or judge shall make an order which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issues to those not disposed of by admissions or agreements of counsel, and such order when entered controls the subsequent course of the proceeding, unless modified to prevent manifest injustice.

* * * * *

Rule 33. Prehearing conference

Within 14 days of service of the notice of appeal under 28 U.S.C. § 1295 (a) (1) in cases in which all parties are represented by counsel, the parties shall discuss settlement of the case. Not later than 21 days after service of the principal brief of the appellant, the parties shall file either a joint statement of compliance with this rule indicating that settlement discussions have been conducted or an agreement that the proceeding be dismissed under Rule 42 (b) of the Federal Rules of Appellate Procedure. This rule does not preclude the parties from discussing settlement or agreeing to dismiss the proceedings at other times.

Rule 34. Oral argument

(a) *In general; local rule.* -- Oral argument shall be allowed in all cases unless pursuant to local rule a panel of three judges, after examination of the briefs and record, shall be unanimously of the opinion that oral argument is not needed. Any such local rule shall provide any party with an opportunity to file a statement setting forth the reasons why oral argument should be heard. A general statement of the criteria employed in the administration of such local rule shall be published in or with the rule and such criteria shall conform substantially to the following minimum standard:

Oral argument will be allowed unless

(1) the appeal is frivolous; or

(2) the dispositive issue or set of issues has been recently authoritatively decided; or

(3) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

(b) *Notice of argument; postponement.* -- The clerk shall advise all parties whether oral argument is to be heard, and if so, of the time and place therefor, and the time to be allowed each side. A request for postponement of the argument or for allowance of additional time must be made by motion filed reasonably in advance of the date fixed for hearing.

(c) *Order and content of argument.* -- The appellant is entitled to open and conclude the argument. ~~The opening argument shall include a fair statement of the case.~~ Counsel will not be permitted to read at length from briefs, records or authorities.

(d) *Cross and separate appeals.* -- A cross or separate appeal shall be argued with the initial appeal at a single argument, unless the court otherwise directs. If a case involves a cross appeal, the plaintiff in the action below shall be deemed the appellant for the purpose of this rule unless the parties otherwise agree or the court otherwise directs. If separate appellants support the same argument, care shall be taken to avoid duplication of argument.

(e) *Non-appearance of parties.* -- If the appellee fails to appear to present argument, the court will hear argument on behalf of the appellant, if present. If the appellant fails to appear, the court may hear argument on behalf of the appellee, if present. If neither party appears, the case will be decided on the briefs unless the court shall otherwise order.

(f) *Submission on briefs.* -- By agreement of the parties, a case may be submitted for decision on the briefs, but the court may direct that the case be argued.

(g) *Use of physical exhibits at argument; removal.* -- If physical exhibits other than documents are to be used at the argument, counsel shall arrange to have them placed in the court room before the court convenes on the date of the argument. After the argument counsel shall cause the exhibits to be removed from the court room unless the court otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after notice is given by the clerk, they shall be destroyed or otherwise disposed of as the clerk shall think best.

* * * * *

Rule 34. Oral argument

(a) *General.* -- The provisions of Rule 34 (a) of the Federal Rules of Appellate Procedure regarding unanimity of the panel in dispensing with oral argument, the opportunity to submit a statement supporting oral argument, and the criteria to determine whether oral argument is needed, are adopted and made part of this rule.

(b) *Time allowed.* -- The time allowed each side for oral argument shall be determined by the court. Counsel will be advised by the clerk of the time allotted by the court. A party is not obliged to use all the time allowed, and the court may terminate the argument whenever in its judgment further argument is unnecessary.

(c) *Visual aids.* -- Use at oral argument of illustrative models, specimens, samples, charts, diagrams, and other visual aids used at the trial or administrative hearing is encouraged. When a visual aid was not used at the trial or administrative hearing, written notice of its proposed use shall be given to opposing counsel not fewer than 15 days before the date of hearing. Objections, if any, shall be in writing, served on all adverse parties, and filed not fewer than 5 days prior to the hearing date. This rule shall neither preclude agreement of counsel on the use of visual aids nor preclude use of a chalkboard or equivalent during oral argument. The clerk may dispose of visual aids not removed by the parties within 90 days after the mandate of the court has issued.

(d) *Order of argument in cross appeals.* -- The cross appellant is entitled to close the argument.

(e) *Motions.* -- Oral argument is normally not granted on motions.

* * * * *

Practice Note

Court sessions. Sessions of the court will be held as announced by the court. Although sessions are held regularly in Washington, DC, the court may

sit in any city named in 28 U.S.C. § 48 (a) - (b). At docketing, counsel are alerted that their case is tentatively calendared for hearing in approximately 6 months. Counsel are advised of the firm date of hearing (which may be earlier or later than the tentative date of hearing) approximately 30 days in advance of the session. Once scheduled, a case will not be postponed except upon motion and a showing of compelling reasons therefor. Counsel may elect to submit on the briefs to avoid delay in disposition or for any other reason. Counsel should advise the clerk in writing of potential scheduling conflicts as soon as they become known and should not wait for an actual conflict to arise.

Oral argument. Counsel must report to the Clerk's Office at least 30 minutes before the scheduled session and before proceeding to the courtroom. Counsel should consult the bulletin board in the Clerk's Office before signing in at the counter.

The members of the panel will have read the briefs before oral argument. Counsel should, therefore, emphasize the dispositive issue or issues. Time allotted for oral argument is ordinarily l5 minutes, though more or less time will be allotted when warranted by the nature of the case. The court may extend the allotted time during the argument, or it may terminate the argument whenever in its judgment further argument is unnecessary. Oral arguments are recorded for the convenience of the court, and copies of the recording may be purchased from the Administrative Services Officer of the court. Unless held in camera, oral arguments are open to the public, but those in attendance whose attire or behavior reflects adversely on the dignity of the proceedings will be asked to leave.

When counsel are notified of the firm date of oral argument, they will be sent a pamphlet, Notice to Counsel on Oral Argument, which contains detailed instructions about the conduct of oral argument.

Rule 35. Determination of causes by the court in banc

(a) ***When hearing or rehearing in banc will be ordered.*--A majority of the circuit judges who are in regular active service may order that an appeal or other proceeding be heard or reheard by the court of appeals in banc. Such a hearing or rehearing is not favored and ordinarily will not be ordered except (1) when consideration by the full court is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance.**

(b) ***Suggestion of a party for hearing or rehearing in banc.*** **-- A party may suggest the appropriateness of a hearing or rehearing in banc. No response shall be filed unless the court shall so order. The clerk shall transmit any such suggestion to the members of the panel and the judges of the court who are in regular active service but a vote need not be taken to determine whether the cause shall be heard or reheard in banc unless a judge in regular active service or a judge who was a member of the panel that rendered a decision sought to be reheard requests a vote on such a suggestion made by a party.**

(c) *Time for suggestion of a party for hearing or rehearing in banc; suggestion does not stay mandate.* -- **If a party desires to suggest that an appeal be heard initially in banc, the suggestion must be made by the date on which the appellee's brief is filed. A suggestion for a rehearing in banc must be made within the time prescribed by Rule 40 for filing a petition for rehearing, whether the suggestion is made in such petition or otherwise. The pendency of such a suggestion whether or not included in a petition for rehearing shall not affect the finality of the judgment of the court of appeals or stay the issuance of the mandate.**

* * * * *

Rule 35. Determination of causes by the court in banc

(a) *General.* -- In banc consideration, whether upon initial hearing or rehearing, is an extraordinary procedure. Upon initial hearing, the case must require answer to a precedent-setting question of exceptional importance. On rehearing, the case must require either answer to a precedent-setting question of exceptional importance or resolution of a conflict between the panel opinion and precedent of the Supreme Court of the United States or of this circuit.

Although only the court in banc may overrule a binding precedent, a party desiring to argue for overruling need not make a suggestion for hearing in banc but may so argue in its principal brief and at oral argument, relegating to the panel any request to be made of the active judges to decide the case in banc.

Filing a suggestion for rehearing in banc that does not meet the standards of Rule 35 (a) of the Federal Rules of Appellate Procedure may be deemed frivolous and subject to appropriate sanctions.

Filing a suggestion for rehearing in banc is not a prerequisite to filing a petition for a writ of certiorari in the Supreme Court.

(b) *Content of suggestion for hearing or rehearing in banc.* -- A suggestion that an appeal be initially heard in banc shall contain the following statement of counsel at the beginning of the suggestion:

> Based on my reasoned and studied professional judgment, I believe this appeal requires answer to one or more precedent-setting questions of exceptional importance: (set forth each question in a separate sentence).
>
> /s/_____
>
> ATTORNEY OF RECORD FOR _____

A suggestion that an appeal be reheard in banc shall contain one or both of the following statements of counsel, as applicable, at the beginning of the suggestion:

> Based on my reasoned and studied professional judgment, I believe the panel decision is contrary to the following decision(s) of the

Supreme Court of the United States or the precedent(s) of this court: (cite specifically the decision(s) or precedent(s)).

Based on my reasoned and studied professional judgment, I believe this appeal requires answer to one or more precedent-setting questions of exceptional importance: (set forth each question in a separate sentence).

/s/_____

ATTORNEY OF RECORD FOR _____

(c) *Suggestion for hearing in banc; response; format; service; length; cover; certificate of interest; number of copies.* -- A suggestion for hearing in banc or response if requested by the court shall be in the form prescribed by Rule 32 (a) of the Federal Rules of Appellate Procedure. A suggestion for hearing in banc or response shall not exceed five pages, excluding pages containing the certificate of interest, table of contents, table of citations, and any addendum containing statutes, rules, regulations, etc. The cover shall contain the information required of briefs (see Fed. Cir. R. 32 (e)). The cover of the suggestion shall be yellow and the cover of the answer, if one is required by the court, shall be brown. A certificate of interest (see Fed. Cir. R. 47.4) shall immediately follow the cover. Fifteen copies of the suggestion for hearing in banc shall be filed with the court, and two copies shall be served on each party separately represented.

(d) *Suggestions for rehearing in banc; response; format; service; length; cover; certificate of interest; appendix; number of copies.* -- A suggestion for rehearing in banc or response if requested by the court shall be in the form prescribed by Rule 32 (a) of the Federal Rules of Appellate Procedure. A suggestion for rehearing in banc or response may not exceed 15 pages, excluding pages containing the certificate of interest, table of contents, table of citations, and any addendum containing statutes, rules, regulations, etc. The cover shall contain the information required of briefs (see Fed. Cir. R. 32 (e)). The cover of the suggestion shall be yellow and the cover of the answer, if one is required by the court, shall be brown. A certificate of interest (see Fed. Cir. R. 47.4) shall immediately follow the cover. A copy of the opinion in the appeal sought to be reheard shall be bound with the suggestion as an appendix. Fifteen copies of the suggestion for rehearing in banc shall be filed with the court, and two copies shall be served on each party separately represented.

(e) *Combined petition for rehearing and suggestion for rehearing in banc.* - The combined petition for rehearing (see Fed. R. App. P. 40) and suggestion for rehearing in banc shall conform to (d) of this Federal Circuit Rule 35. The cover of a combined petition for rehearing and suggestion for rehearing in banc shall so indicate. A petition for rehearing and a suggestion for rehearing in banc filed by the same party must be combined.

* * * * *

Practice Note

Hearing or rehearing in banc. Suggestions for hearing and rehearing in banc are considered and decided upon by all active circuit judges, of whom a majority is required to adopt the suggestion. The court may sua sponte order that an appeal be initially heard or reheard in banc. If a suggestion for initial hearing in banc is declined, the party may still argue to the panel that a prior decision of the court ought to be overruled. The panel or a judge on the panel may at any time request the active judges of the court to hear or rehear the case in banc with or without further briefs or argument by counsel.

Rehearing in banc; senior judges. If a senior judge participated in the original hearing and disposition of the case, and rehearing in banc is granted, that judge may fully participate in the rehearing.

Combined petition for rehearing and suggestion for rehearing in banc. When a combined petition and suggestion is filed, the petition is decided first in the same manner as one without an accompanying suggestion. If the panel grants the entire relief requested the suggestion is deemed moot.

Suggestions for rehearing in banc not referred to panel. This court has not adopted the practice used in some regional courts of appeals of first referring a suggestion for rehearing in banc to the panel that heard the appeal as if it were a combined petition for rehearing and suggestion for rehearing in banc.

Timeliness. The clerk may return an untimely suggestion for hearing or rehearing in banc.

Pre-publication Review. Counsel considering a suggestion for rehearing in banc should bear in mind that, at least 10 days before it is issued, each opinion prepared for publication is circulated to all active and senior judges for comment and to the Senior Technical Assistant for comment respecting any appearance of conflict between the language in the opinion and that in earlier opinions of the court or its predecessor courts.

Rule 36. Entry of judgment

The notation of a judgment in the docket constitutes entry of the judgment. The clerk shall prepare, sign and enter the judgment following receipt of the opinion of the court unless the opinion directs settlement of the form of the judgment, in which event the clerk shall prepare, sign and enter the judgment following final settlement by the court. If a judgment is rendered without an opinion, the clerk shall prepare, sign and enter the judgment following instruction from the court. The clerk shall on the date judgment is entered, mail to all parties a copy of the opinion, if any, or of the judgment if no opinion was written, and notice of the date of entry of the judgment.

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Rule 36. Entry of judgment

Affirmance without Opinion. The court may enter a judgment of affirmance without opinion, citing this rule, when it determines that any of the following circumstances exist:

(a) the judgment, decision or order of the trial court appealed from is based on findings that are not clearly erroneous;

(b) the evidence in support of a jury verdict is sufficient;

(c) summary judgment, directed verdict, or judgment on the pleadings is supported by the record;

(d) the decision of an administrative agency warrants affirmance under the standard of review in the statute authorizing the petition for review; or

(e) a judgment or decision has been entered without an error of law;

and an opinion would have no precedential value.

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Practice Note

A separate judgment is not prepared when a case is dismissed on consent or on motion or for failure to prosecute. The order of dismissal serves as the judgment when entered.

Rule 37. Interest on judgments

Unless otherwise provided by law, if a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable from the date the judgment was entered in the district court. If a judgment is modified or reversed with a direction that a judgment for money be entered in the district court, the mandate shall contain instructions with respect to allowance of interest.

Rule 38. Damages for delay

If a court of appeals shall determine that an appeal is frivolous, it may award just damages and single or double costs to the appellee.

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Practice Note

Warning against filing or proceeding with frivolous appeals or petitions. -- The court's early decision in *Asberry v. United States,* 692 F.2d 1378 (Fed.Cir. 1982), established the policy of enforcing this rule vigorously. Since then, many published opinions have included sanctions under the rule. Damages, double

costs, and attorney fees, singly or in varying combinations, have been imposed on counsel, parties, and pro se petitioners and appellants for pursuing frivolous appeals.

Challenging frivolous appeals. -- Appellees and respondents are expected to challenge frivolous appeals and petitions for review in their principal brief. A party whose case has been challenged as frivolous is expected to respond to the challenge in the reply brief or to voluntarily request dismissal of the case.

Rule 39. Costs

(a) *To whom allowed.* -- Except as otherwise provided by law, if an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed by the parties or ordered by the court; if a judgment is affirmed, costs shall be taxed against the appellant unless otherwise ordered; if a judgment is reversed, costs shall be taxed against the appellee unless otherwise ordered; if a judgment is affirmed or reversed in part, or is vacated, costs shall be allowed only as ordered by the court.

(b) *Costs for and against the United States.* -- In cases involving the United States or an agency or officer thereof, if an award of costs against the United States is authorized by law, costs shall be awarded in accordance with the provisions of subdivision (a); otherwise, costs shall not be awarded for or against the United States.

(c) *Costs of briefs, appendices, and costs of records.* -- By local rule the court of appeals shall fix the maximum rate at which the cost of printing or otherwise producing necessary copies of brief, appendices, and copies of records authorized by Rule 30 (f) shall be taxable. Such rate shall not be higher than that generally charged for such work in the area where the clerk's office is located and shall encourage the use of economical methods of printing and copying.

(d) *Bill of costs; objections; costs to be inserted in mandate or added later.* -- A party who desires such costs to be taxed shall state them in an itemized and verified bill of costs which the party shall file with the clerk, with proof of service, within 14 days after the entry of judgment. Objections to the bill of costs must be filed within 10 days of service on the party against whom costs are to be taxed unless the time is extended by the court. The clerk shall prepare and certify an itemized statement of costs taxed in the court of appeals for insertion in the mandate, but the issuance of the mandate shall not be delayed for taxation of costs and if the mandate has been issued before final determination of costs, the statement, or any amendment thereof, shall be added to the mandate upon request by the clerk of the court of appeals to the clerk of the district court.

(e) *Costs on appeal taxable in the district courts.* -- Costs incurred in the preparation and transmission of the record, the cost of the reporter's transcript, if necessary for the determination of the

appeal, the premiums paid for cost of supersedeas bonds or other bonds to preserve rights pending appeal, and the fee for filing the notice of appeal shall be taxed in the district court as costs of the appeal in favor of the party entitled to costs under this rule.

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Rule 39. Costs

The bill of costs shall be submitted on the form prescribed by the court.

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Practice Note

Costs where the United States is a party; costs in ex parte appeals from the Patent and Trademark Office. -- The taxation of costs against the United States is authorized by 28 U.S.C.§ 2412 (a); thus, costs (as defined in 28 U.S.C. § 1920) may be awarded both for and against the United States in this court. Costs in ex parte appeals under 35 U.S.C. § 141, however, are not awarded for or against the Patent and Trademark Office, as these proceedings are not within the scope of 28 U.S.C. § 2412.

Limitation on printing costs. The costs taxable under Fed. R. App. P. 39 are limited to the costs of preparing typewritten briefs (even if a party elects to have a brief printed) and of copying briefs and appendices.

Current rates. The following rates are the current, maximum allowable costs:

$6.00 per page for the table of page numbers of designated materials, the originals of briefs, and the table of contents for the appendix (printed, typewritten or word-processed);

$0.08 per page for copying and collating; and

$2.00 per copy for covers and binding.

Costs may be billed for 16 copies of briefs and appendices, plus 2 copies for each additional party, plus any copies required or allowed, e.g., confidential briefs or appendices. The cost of service copies of the table or physical compilation of the designated materials may also be billed. Any other cost billed must be separately justified. The costs of correcting a nonconforming brief or appendix are not taxable. Counsel are urged to stipulate costs.

Rule 40. Petition for rehearing

(a) *Time for filing; content; answer; action by court if granted.* - **A petition for rehearing may be filed within 14 days after entry of judgment unless the time is shortened or enlarged by order or by local rule. The petition shall state with particularity the points of law or**

fact which in the opinion of the petitioner the court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present. Oral argument in support of the petition will not be permitted. No answer to a petition for rehearing will be received unless requested by the court, but a petition for rehearing will ordinarily not be granted in the absence of such a request. If a petition for rehearing is granted the court may make a final disposition of the cause without reargument or may restore it to the calendar for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case.

(b) *Form of petition; length.* -- **The petition shall be in a form prescribed by Rule 32 (a), and copies shall be served and filed as prescribed by Rule 31 (b) for the service and filing of briefs. Except by permission of the court, or as specified by local rule of the court of appeals, a petition for rehearing shall not exceed 15 pages.**

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Rule 40. Petition for rehearing

The cover shall contain the information required of briefs (see Fed. Cir. R. 32 (e)). The cover of the petition shall be yellow and the cover of the answer, if one is requested by the court, shall be brown. A copy of the opinion sought to be reheard shall be bound with the petition as an appendix. An answer, if ordered, shall not exceed 15 pages. Copies shall be served and filed as prescribed by Rule 31 (b) of the Federal Rules of Appellate Procedure.

A party appearing without counsel may file an original and three copies of an informal petition for rehearing in letter form not to exceed five typewritten, double-spaced pages in length, attaching copies of the opinion sought to be reheard.

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Practice Note

Petition for rehearing not filed when mailed. A petition for rehearing, unlike a brief, is not deemed filed when mailed but must be received by the clerk within the time fixed for filing. Moreover, the additional time after service by mail allowed by Fed. R. App. P. 26 (c) does not apply to the issuance of opinions by the court. An untimely petition for rehearing may be returned by the clerk.

Action by the court. When a petition for rehearing is filed, the clerk will transmit copies to the panel that decided the case. The clerk will enter an order denying the petition for rehearing after 10 days unless a majority of the panel agrees to rehear the case and so advises the clerk. Rehearing before the panel may take place with or without further briefing or oral argument by the parties as the panel may determine.

In banc; certiorari. The rules do not authorize a "petition for rehearing in banc," and such a petition will be returned. A petition for rehearing may be combined with a suggestion for rehearing in banc, however. This combined petition and suggestion will be presented first to the panel that heard the appeal. The panel will enter an order granting or denying the petition. If the petition is denied, the suggestion will then be presented to the active circuit judges. The time in which to file a petition for certiorari runs from the denial of the petition for rehearing. The pendency of a suggestion for rehearing in banc whether or not combined with a petition for rehearing does not toll the time in which to file a petition for certiorari.

Rule 41. Issuance of mandate; stay of mandate

(a) *Date of issuance.* -- The mandate of the court shall issue 21 days after the entry of judgment unless the time is shortened or enlarged by order. A certified copy of the judgment and a copy of the opinion of the court, if any, and any direction as to costs shall constitute the mandate, unless the court directs that a formal mandate issue. The timely filing of a petition for rehearing will stay the mandate until disposition of the petition unless otherwise ordered by the court. If the petition is denied, the mandate shall issue 7 days after entry of the order denying the petition unless the time is shortened or enlarged by order.

(b) *Stay of mandate pending application for certiorari.* --A stay of the mandate pending application to the Supreme Court for a writ of certiorari may be granted upon motion, reasonable notice of which shall be given to all parties. The stay shall not exceed 30 days unless the period is extended for cause shown. If during the period of the stay there is filed with the clerk of the court of appeals a notice from the clerk of the Supreme Court that the party who has obtained the stay has filed a petition for the writ in that court, the stay shall continue until final disposition by the Supreme Court. Upon the filing of a copy of an order of the Supreme Court denying the petition for writ of certiorari the mandate shall issue immediately. A bond or other security may be required as a condition to the grant or continuance of a stay of the mandate.

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Rule 41. Issuance of mandate; stay of mandate

An order dismissing a case on consent or for failure to prosecute, or dismissing, remanding, or transferring a case on motion, shall constitute the mandate. The date of the certified order shall be the date of the mandate.

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Practice Note

Suggestion for rehearing in banc does not stay mandate. If a petition for rehearing is denied, the mandate will be issued 7 days thereafter even if a suggestion for rehearing in banc is pending.

Relation of mandate to application for certiorari; stay of mandate. That a mandate has issued does not affect the right to apply to the Supreme Court for writ of certiorari. Consequently, a motion to stay the mandate is expected to advance reasons for the stay other than merely the intention to apply for certiorari, e.g., to forestall action in the trial court or agency that would necessitate a remedial order of the Supreme Court if the writ of certiorari were to be granted.

Rule 42. Voluntary dismissal

(a) *Dismissal in the district court.* -- If an appeal has not been docketed, the appeal may be dismissed by the district court upon the filing in that court of a stipulation for dismissal signed by all the parties, or upon motion and notice by the appellant.

(b) *Dismissal in the court of appeals.* -- If the parties to an appeal or other proceeding shall sign and file with the clerk of the court of appeals an agreement that the proceeding be dismissed, specifying the terms as to payment of costs, and shall pay whatever fees are due, the clerk shall enter the case dismissed, but no mandate or other process shall issue without an order of the court. An appeal may be dismissed on motion of the appellant upon such terms as may be agreed upon by the parties or fixed by the court.

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Practice Note

An appellant or petitioner may request to withdraw an appeal or petition at any time before decision, and the request will be granted in all but the most unusual circumstances. Opposing parties are ordinarily expected to consent to the withdrawal on terms requiring each party to bear its own costs on appeal. A stipulation of the parties that a case is withdrawn may refer to a settlement agreement, but the terms of the settlement should not be included in the stipulation.

Rule 43. Substitution of parties

(a) *Death of a party.* -- If a party dies after a notice of appeal is filed or while a proceeding is otherwise pending in the court of appeals, the personal representative of the deceased party may be substituted as a party on motion filed by the representative or by any party with the clerk of the court of appeals. The motion of a party shall be served upon the representative in accordance with the provisions of Rule 25. If the deceased party has no representative, any

party may suggest the death on the record and proceedings shall then be had as the court of appeals may direct. If a party against whom an appeal may be taken dies after entry of a judgment or order in the district court but before a notice of appeal is filed, an appellant may proceed as if death had not occurred. After the notice of appeal is filed substitution shall be effected in the court of appeals in accordance with this subdivision. If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by that party's personal representative, or, if there is no personal representative by that party's attorney of record within the time prescribed by these rules. After the notice of appeal is filed substitution shall be effected in the court of appeals in accordance with this subdivision.

(b) *Substitution for other causes.* -- If substitution of a party in the court of appeals is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in subdivision (a).

(c) *Public officers; death or separation from office.* -- (1) When a public officer is a party to an appeal or other proceeding in the court of appeals in an official capacity and during its pendency dies, resigns or otherwise ceases to hold office, the action does not abate and the public officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) When a public officer is a party to an appeal or other proceeding in an official capacity that public officer may be described as a party by the public officer's official title rather than by name; but the court may require the public officer's name to be added.

Rule 44. Cases involving constitutional questions where United States is not a party

It shall be the duty of a party who draws in question the constitutionality of any Act of Congress in any proceeding in a court of appeals to which the United States, or any agency thereof, or any officer or employee thereof, as such officer or employee, is not a party, upon the filing of the record, or as soon thereafter as the question is raised in the court of appeals, to give immediate notice in writing to the court of the existence of said question. The clerk shall thereupon certify such fact to the Attorney General.

Rule 45. Duties of clerks

(a) *General provisions.* -- The clerk of a court of appeals shall take the oath and give the bond required by law. Neither the clerk nor any deputy clerk shall practice as an attorney or counselor in any court

while continuing in office. The court of appeals shall be deemed always open for the purpose of filing any proper paper, of issuing and returning process and of making motions and orders. The office of the clerk with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays, but a court may provide by local rule or order that the office of its clerk shall be open for specified hours on Saturdays or on particular legal holidays other than New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

(b) *The docket; calendar; other records required.* **-- The clerk shall maintain a docket in such form as may be prescribed by the Director of the Administrative Office of the United States Courts. The clerk shall enter a record of all papers filed with the clerk and all process, orders and judgments. An index of cases contained in the docket shall be maintained as prescribed by the Director of the Administrative Office of the United States Courts.**

The clerk shall prepare, under the direction of the court, a calendar of cases awaiting argument. In placing cases on the calendar for argument, the clerk shall give preference to appeals ~~in criminal cases and to appeals~~ and other proceedings entitled to preference by law.

The clerk shall keep such other books and records as may be required from time to time by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States, or as may be required by the court.

(c) *Notice of orders or judgments.* **-- Immediately upon the entry of an order or judgment the clerk shall serve a notice of entry by mail upon each party to the proceeding together with a copy of any opinion respecting the order or judgment, and shall make a note in the docket of the mailing. Service on a party represented by counsel shall be made on counsel.**

(d) *Custody of records and papers.* **-- The clerk shall have custody of the records and papers of the court. The clerk shall not permit any original record or paper to be taken from the clerk's custody except as authorized by the orders or instructions of the court. Original papers transmitted as the record on appeal or review shall upon disposition of the case be returned to the court or agency from which they were received. The clerk shall preserve copies of briefs and appendices and other printed papers filed.**

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Rule 45. Duties of clerk

(a) *Dismissal by clerk; reconsideration.* -- The clerk may dismiss an appeal for failure to follow the rules. Reconsideration of such dismissal may be sought from the court by motion, which must be filed within 14 days after receiving the order of dismissal.

(b) *Authority to enter orders.* -- The clerk shall enter orders FOR THE COURT only when authorized by these rules or upon the direction of a judge or panel of judges.

(c) *Communication with the court.* -- All correspondence and telephone calls about cases and all inquiries from the press should be directed to the clerk.

Rule 46. Attorneys

(a) *Admission to the bar of a court of appeals; eligibility; procedure for admission.* -- An attorney who has been admitted to practice before the Supreme Court of the United States, or the highest court of a state, or another United States court of appeals, or a United States district court (including the district courts for the Canal Zone, Guam and the Virgin Islands), and who is of good moral and professional character, is eligible for admission to the bar of a court of appeals.

An applicant shall file with the clerk of the court of appeals, on a form approved by the court and furnished by the clerk, an application for admission containing the applicant's personal statement showing eligibility for membership. At the foot of the application the applicant shall take and subscribe to the following oath or affirmation:

I, _____, do solemnly swear (or affirm) that I will demean myself as an attorney and counselor of this court, uprightly and according to law; and that I will support the Constitution of the United States.

Thereafter, upon written or oral motion of a member of the bar of the court, the court will act upon the application. An applicant may be admitted by oral motion in open court, but it is not necessary that the applicant appear before the court for the purpose of being admitted, unless the court shall otherwise order. An applicant shall upon admission pay to the clerk the fee prescribed by rule or order of the court.

(b) *Suspension or disbarment.* -- When it is shown to the court that any member of its bar has been suspended or disbarred from practice in any other court of record, or has been guilty of conduct unbecoming a member of the bar of the court, the member will be subject to suspension or disbarment by the court. The member shall be afforded an opportunity to show good cause, within such time as the court shall prescribe, why the member should not be suspended

or disbarred. Upon the member's response to the rule to show cause, and after hearing, if requested, or upon expiration of the time prescribed for a response if no response is made, the court shall enter an appropriate order.

(c) *Disciplinary power of the court over attorneys.* -- A court of appeals may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing, if requested, take any appropriate disciplinary action against any attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with these rules or any rule of the court.

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Rule 46. Attorneys

(a) *Qualifications for admission.* -- An attorney who is admitted to practice before any of the courts listed in Rule 46 (a) of the Federal Rules of Appellate Procedure or before the United States district courts for Puerto Rico and the Northern Mariana Islands, the United States Court of International Trade, the United States Claims Court, or the District of Columbia Court of Appeals, who is in good standing therein, and who is of good moral and professional character, is eligible for admission to the bar of this court.

(b) *Procedure for admission.* -- Attorneys may be admitted to the bar in open court appearing personally with a sponsor, who is a member of the bar of this court, who states the applicant's qualifications and moves the admission. Motions for admission to the bar will be entertained at the opening of each session of court. An attorney may also be admitted upon written motion of a member of the bar of the court. Attorneys may also be admitted on their own motion, accompanied by a certificate of good standing from a court enumerated in Rule 46 (a) of the Federal Rules of Appellate Procedure or in this Federal Circuit Rule 46. The certificate must be dated within 30 days of the motion for admission and bear the seal of the issuing court. The motion for admission shall be submitted on a form approved by this court and furnished by the clerk. The oath in either instance shall be that prescribed by the court.

(c) *Admission fee.* -- The prescribed fee for admission is $25, payable to the clerk, for which the applicant shall receive a certificate of admission. For a duplicate certificate of admission the fee is $10. The clerk as trustee shall deposit the fee in a special account in a bank designated by the court.

(d) *Government attorneys.* -- Attorneys for any Federal, State or local government office or agency may appear before this court in connection with their official duties without formal admission to the bar of the court.

Rule 47. Rules by courts of appeals

Each court of appeals by action of a majority of the circuit judges in regular active service may from time to time make and amend rules governing its practice not inconsistent with these rules. In all

cases not provided for by rule, the courts of appeals may regulate their practice in any manner not inconsistent with these rules. Copies of all rules made by a court of appeals shall upon their promulgation be furnished to the Administrative Office of the United States Courts.

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FEDERAL CIRCUIT PROCEDURAL MATTERS

Rule 47.1. Sessions and places of holding court

(a) *Sessions.* -- Sessions of the court will be held as announced by the court.

(b) *Places of holding court.* -- The court may hold sessions in any place named in 28 U.S.C. § 48 and permitted under 28 U.S.C. § 48 (b).

Rule 47.2. Panels

(a) *Panels.* -- Cases and controversies will be heard and determined by a panel consisting of an odd number of judges not fewer than three, two of whom may be senior judges of the court. A panel of more than three judges may be provided when warranted; appeals in cases from the Court of International Trade decided by a three-judge court pursuant to 28 U.S.C. §255 will ordinarily be referred to a panel of five judges.

(b) *Assignment of cases.* -- Assignment of cases to panels will be made so as to provide each judge with a representative cross section of the fields of law within the exclusive jurisdiction of the court. A subsequent appeal or petition in a case will to the extent possible be assigned to the panel that decided the earlier appeal(s) or petition(s).

Rule 47.3. Appearance

(a) *Parties and amicus curiae represented.* -- Except for an individual (not a corporation, partnership, organization, or other legal entity) appearing pro se, each party and amicus curiae must appear through an attorney who is authorized to practice before this court and must designate one attorney as the attorney of record. Other attorneys assisting the attorney of record shall be designated as "of counsel."

(b) *Appearance.* -- Each pro se party and each attorney of record must file a written appearance on the form provided by the clerk within 10 days after the appeal has been docketed. Attorneys retained thereafter shall file an appearance within 10 days after being retained. The appearance shall include the name of the pro se party or the party or parties represented and the name, address, and telephone number of the individual appearing pro se or the attorney. Attorneys' appearances shall show the name of the law firms or public or quasi-public legal offices with which they are associated. A new notice of appearance must be filed and served each time the information on record changes. Until such time as a party appearing pro se or an attorney of record has filed a written appearance for

a party, service of all papers shall be made upon the party appearing pro se or the party's attorney of record in the proceeding below. An attorney of record, other than a government attorney who has been properly replaced, may not withdraw from the representation of a party without serving notice on the party, filing a motion to withdraw, and obtaining the consent of the court.

(c) *Signature.* -- Each brief, petition, motion, application, notice, or other paper required or permitted to be filed shall contain the original signature in ink of the party appearing pro se or an attorney of record on at least one of the copies presented for filing. In a brief or petition that has been commercially printed, the printed name in lieu of a signature shall be deemed an original signature.

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Practice Note

After docketing, no filing required to be signed will be accepted by the clerk unless it is signed by a party proceeding pro se or by an attorney who is a member of the bar and unless the party proceeding pro se or the attorney has entered an appearance in the case.

Rule 47.4. Certificate of interest

(a) *Contents.* -- To determine whether recusal is necessary or appropriate, an attorney for a party or amicus curiae other than the United States must furnish a certificate of interest (in the form set forth in the appendix to these rules) stating:

(1) The full name of every party or amicus represented by the attorney in the case;

(2) The name of the real party in interest if the party named in the caption is not the real party in interest;

(3) Any publicly held affiliates if a party or amicus curiae is a corporation; and

(4) The names of all law firms whose partners or associates have appeared for the party in the lower tribunal or are expected to appear for the party in this court.

Negative responses, if applicable, are required as to each item on the form.

(b) *Filing.* -- The certificate shall be filed with the notice of appearance. The certificate (omitting the caption) shall also be filed with any petition, motion or response (except those motions enumerated in Federal Circuit Rule 27 (d)) and in each principal brief and brief amicus curiae.

(c) *Changes.* -- If a change in any of the items listed in paragraph (a) of this rule occurs after the certificate is filed and before the mandate has issued, the party shall file an amended certificate within 20 days of the change.

Rule 47.5. Statement of related cases

Each principal brief shall contain a statement of related cases indicating (1) whether any other appeal in or from the same civil action or proceeding in the lower court or body was previously before this or any other appellate court under the same or similar title (stating the title and number of that earlier appeal, the date of decision, the composition of the panel, and the citation of the opinion in the Federal Reporter, Second Series, and U.S. Patents Quarterly, if published); and (2) the title and number of any case known to counsel to be pending in this or any other court that will directly affect or be directly affected by this court's decision in the pending appeal. Where the related cases are numerous, they may be described generally, but title and number shall be given for any case known to be pending in the Supreme Court, this court, or any other circuit court of appeals.

Rule 47.6. Statement of jurisdiction

The principal brief of the appellant or petitioner shall contain a concise statement of the grounds on which the jurisdiction of this court rests, including in this sequence:

(a) The statutory basis for jurisdiction of the trial court, board or agency;

(b) The statutory basis for jurisdiction of this court to hear the appeal or petition for review or to entertain the extraordinary writ at this time; and

(c) A statement that the appeal or petition for review is timely, and the citation of the statute or regulation governing the timeliness of filing.

Rule 47.7. Statement concerning attorney fees

The principal brief of a party shall contain a statement of the statutory basis for any claim for attorney fees being made in the brief.

Rule 47.8. Opinions and orders of the court

(a) *Disposition of appeals.* -- Disposition of appeals may be announced in a published or unpublished opinion or order. "Published" means the opinion or order has been prepared and forwarded for publication in one or more commercial reports of decisions. "Unpublished" means an opinion or order that has not been prepared for publication in a commercial report of decisions.

(b) *Orders.* -- The action of the court in granting or denying motions, petitions, and similar actions may be announced in a published or unpublished order.

(c) *Unpublished opinions and orders.* -- Unpublished opinions and orders are those unanimously determined by the panel as not adding significantly or usefully to the body of law and not having precedential value. Opinions and orders designated as unpublished shall not be employed as precedent by this court, and may not be cited by counsel as precedent, except in support of a claim of res judicata, collateral estoppel, or law of the case.

(d) *Request for publication.* -- Any person may request that an unpublished opinion or order be reprepared and reissued for publication, citing reasons therefor. Such request will be granted or denied by the panel that rendered the decision.

(e) *Public records.* -- All decisions, and opinions and orders accompanying decisions of this court shall be provided to the parties, shall be public records of the court, and shall be accessible to, and subject to comment and reproduction by, the public.

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Practice Note

Filing of opinions. Opinions are handed down or issued when ready. No particular day of the week is considered a "down day." Opinions are not issued on a holiday as defined in Rule 26 (a) of the Federal Rules of Appellate Procedure. The entry of judgment date is the day on which the opinion is filed with the clerk and mailed to the parties.

Availability of opinions. The court's published and unpublished opinions are available in a variety of commercially available print and electronic media.

Subscriptions. Subscriptions to opinions are not available from the court but are available from several commercial sources.

Information about opinions. A disposition sheet containing information about decisions rendered, opinions issued, and actions taken on petitions for rehearing is posted daily in the Clerk's Office. That information about opinions is also available after 11:00 a.m. daily on a telephone recording by dialing direct: (202) 633-6002.

Rule 47.9. Attorney fees and expenses incurred in this court

(a) *Time for filing; responses.* -- The court may award attorney fees and expenses where authorized by law. Applications must be filed within the time prescribed in the statute authorizing the award, but if the statute does not prescribe a time the application shall be made within 10 days after entry of judgment or of an order denying rehearing, whichever occurs later. No response shall be filed to an application unless directed by the court, but no application will be granted without an opportunity to submit a response.

(b) *Content of application.* -- Each application for attorney fees and expenses shall contain a citation to the authority that authorizes an award and shall indicate the manner in which the prerequisites for an award including timeliness of the application have been fulfilled. In addition, each application shall contain a statement, under oath, that specifies:

(1) The nature of each service rendered;

(2) The amount of time expended in rendering each type of service; and

(3) The customary charge for each type of service rendered.

Rule 47.10. In camera proceedings

In a proper case, where the interests of justice require, and upon a convincing showing thereof by motion properly made, the court will sit in camera or may seal its record, or both.

Rule 47.11. Petitions for judicial review under 5 U.S.C. § 7703 (d)

(a) *Time for filing.* -- A petition for review of a final order or decision of the Merit Systems Protection Board or of an arbitrator pursuant to 5 U.S.C. § 7703 (d) may be sought by the Director of the Office of Personnel Management within 30 days after the date the Director received notice of the final order or decision of the Board or arbitrator.

(b) *Contents.* -- The petition shall contain:

(1) A statement of jurisdiction (see Fed. Cir. R. 47.6);

(2) The Director's determination of the alleged error committed by the Board or arbitrator in interpreting a civil service law, rule, or regulation affecting personnel management, and the reasons supporting the determination;

(3) The Director's determination that the decision of the Board or arbitrator will have an alleged substantial impact upon a civil service law, rule, regulation, or policy directive, and the reasons supporting the determination; and

(4) An appendix, including a copy of the decision sought to be reviewed and any relevant portion of the record on review. The appendix may also include documents or affidavits not part of the record on review that are relevant to the determination that the decision will have the substantial impact alleged.

(c) *Service and filing; number of copies.* -- The Director shall file with the clerk an original and three copies of the petition with proof of service and shall serve a copy of the petition upon the named respondents, all other parties before the Board or arbitrator, and the Board or arbitrator.

(d) *Notice of docketing.* -- The clerk shall enter the petition on the miscellaneous docket upon receipt and shall notify the named respondents, all other parties before the Board or arbitrator, and the Board or arbitrator, of the date on which the petition was docketed.

(e) *Appearances by other than the named respondent.* -- The Board or arbitrator and all other parties to the proceedings before them desiring to participate in the proceedings in this court must enter an appearance and thereafter will be deemed a respondent.

(f) *Answer.* -- Within 10 days of the date of docketing any respondent may file an answer in opposition. The answer may include an appendix containing any relevant portion of the record on review not included in the appendix to the petition as well as documents or affidavits not part of the record on review that are relevant to the determination that the decision will have the substantial impact alleged.

(g) *Action by the court.* -- The granting of the petition for review shall be at the discretion of the court. Upon receipt of an order granting review, the clerk shall enter the petition for review on the general docket. The petition for review shall thereafter proceed as if filed under Rule 15 of the Federal Rules of Appellate Procedure.

Rule 47.12 Dismissal of bankruptcy stay cases

An appeal stayed in accordance with the bankruptcy stay provisions of 11 U.S.C. § 362 may be dismissed by the clerk without prejudice to the appellant reinstating the appeal within 30 days after the stay is lifted or the bankruptcy proceeding is concluded.

Rule 48. Title

These rules may be known and cited as the Federal Rules of Appellate Procedure.

* * * * *

Rule 48. Title

These rules may be known and cited as the Federal Circuit Rules.

FEDERAL CIRCUIT ADMINISTRATIVE MATTERS

Rule 49. Seal of the court

The seal of the court shall contain on its outer edge the legend "Seal of the United States Court of Appeals for the Federal Circuit" with a ring of 50 stars therein. In the center of the seal are the Scales of Justice resting on a book and superimposed over an outline of the United States of America. The clerk shall be the keeper of the seal, which shall be the means of authentication of all records and certificates issued from this court.

Rule 50. Employees and former employees

No employee of the court shall engage in the practice of law. No former employee of the court shall participate or assist, by way of representation, consultation, or otherwise, in any case pending in the court during the period of employment.

Rule 51. Complaints of judicial misconduct or disability

The procedures for processing complaints of judicial misconduct or disability pursuant to 28 U.S.C. § 372 (c), as added by the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980, Pub. L. No. 96-458, 94 Stat. 2035 (1980), are incorporated into these rules. Copies of these procedures are available from the clerk on request.

Rule 52. Fees

(a) *Schedule of fees.* -- Except as expressly provided in these rules, the fees to be charged by the clerk of this court shall be the fees prescribed by the Judicial Conference of the United States pursuant to 28 U.S.C. § 1913. No fees are to be charged for services rendered on behalf of the United States. The fees are as follows:

(1) For docketing a case on appeal or petition for review, or docketing any other proceeding, $100. Each party filing a notice of appeal or petition for review shall pay a separate fee, but parties filing a joint notice of appeal or a joint petition for review are required to pay only one fee. The docketing fee shall not be charged for docketing a petition for permission to appeal under Rules 5 or 5.1 of the Federal Rules of Appellate Procedure unless the appeal is allowed.

The docketing fee will be paid to the clerk of the trial court upon filing the notice of appeal in that court. The docketing fee will be paid to the clerk of this court upon filing any other proceeding, including appeals or petitions for review from the Patent and Trademark Office or the Merit Systems Protection Board or from any other administrative agency, and extraordinary writs.

(2) For every search of the records of the court and certifying the results thereof, $15.

(3) For certification or exemplification of any document on paper, other than a certificate of admission to the bar but including a certificate of good standing, whether the certification is made directly on the document or by separate instrument, $5.

(4) For reproducing any record or paper, 50 cents per page. This fee shall apply to paper copies made from either (i) original documents; or (ii) microfiche or microfilm reproductions of the original records.

(5) For reproducing magnetic tape recordings, either cassette or reel-to-reel, $15 including the cost of materials.

(6) For reproducing the record in any appeal in which the requirement of an appendix is dispensed with pursuant to Rule 30 (f) of the Federal Rules of Appellate Procedure, a flat fee of $25.

(7) For each microfiche or microfilm copy of any court record, where available, $3.

(8) For retrieving a record from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court, $25.

(9) For a check paid into the court that is returned for lack of funds, $25.

(10) For each copy of an opinion (including any separate or dissenting opinions), $2. No charge shall be assessed for the following:

(i) A copy of the opinion furnished to each party of record in the case; and

(ii) Copies of opinions furnished persons and organizations whose names are included on a public interest list established by order of the court.

(b) *Fees to be paid in advance.* -- The clerk shall not be required to docket any proceeding or perform any other service until all fees due the clerk have been paid, except where a party has been granted leave to proceed in forma pauperis.

(c) *Dismissal of appeal for failure to pay docketing fee.* -- If a proceeding is docketed without prepayment of the docketing fee, the appellant shall pay the fee within 14 days after docketing. If the appellant fails to do so, the clerk is authorized to dismiss the appeal.

* * * * *

Practice Note

No refund of fees. Fees are deposited with the Treasury Department immediately upon receipt. The clerk is not authorized to refund any fee once it is deposited.

Checks and drafts. Checks and drafts are accepted subject to collection, and full credit will be given only when the check or draft has been accepted by the financial institution on which it is drawn.

Rule 53. Judicial Conference

There shall be held annually, at such time and place as shall be designated by the Chief Judge, a conference to consider the state of business of the court and to advise ways and means of improving the administration of justice. It shall be the duty of each active judge to attend the conference and, unless excused by the Chief Judge, to remain throughout the conference. The Chief Judge presides at the conference. All members of the bar of the court may be members of the conference and may participate in its discussions and deliberations. Registrants shall pay a fee to be applied to the payment of expenses of the conference.

Rule 54. Library

The library in the National Courts Building serves this court and the United States Claims Court. The library's patrons are limited to the judges of the courts

and their staffs or designees, members of the bars of either court, pro se litigants with pending cases in either court, attorneys employed by the United States, and employees of the Administrative Office of the United States Courts and the Federal Judicial Center. The Librarian may suspend a patron for cause and may, when conditions warrant, close the library to all except judges and their staffs. Only judges and their staffs may check out books. Library books may not be removed from the premises of the National Courts Building without the express permission of the Librarian.

GUIDE FOR PRO SE PETITIONERS AND APPELLANTS

1. *Appearing pro se or by counsel.* -- You as an individual may conduct your own case pro se in the United States Court of Appeals for the Federal Circuit. ("Pro se" means "in his own behalf.") If you are pro se, you must file a written entry of appearance, within 10 days after your case is docketed, on the form provided by the clerk. Alternatively, you may be represented by a lawyer admitted to practice before this court. If counsel enters an appearance, only counsel may conduct the case. The court has no procedure to appoint counsel for you. Corporations and associations cannot proceed pro se and must be represented by counsel.

2. *Available materials.* -- Your pro se case is subject to the United States Code, Federal Rules of Appellate Procedure, and Federal Circuit Rules. You may obtain the Rules of Practice from the clerk, and you will be sent a copy when your case is docketed. You will find the statutes governing this court's jurisdiction and related matters in the United State Code, the United States Code Annotated, or the United States Code Service, and the decisions of the court in the Federal Reporter, Second Series (F.2d), all available in many public libraries.

3. *Filing petitions for review or notices of appeal; forms.* -- You must file your petition for review or notice of appeal within the time allowed by the statute that authorizes it. Your petition or notice is not considered filed at the time it is postmarked by the U.S. Postal Service; it must actually be received in the place for filing within the time allowed by statute. The statutes allow these times for filing:

Merit Systems Protection Board -- If you petitioned the Merit Systems Protection Board to review the initial decision of the Board's administrative judge, you have 30 days after you receive notice of the Board's action on your petition to file a petition for review with the clerk of this court. If you did not petition the Board to review the initial decision of the Board's administrative judge, you have 30 days to file a petition for review with the clerk of this court after the time to petition the Board expires. If you petition both the Board and this court to review the initial decision of the administrative judge, your petition to this court will be dismissed.

Patent and Trademark Office Boards -- You have 60 days from the date of an initial decision of the Board of Patent Appeals and Interferences or the Trademark Trial and Appeal Board in which to file a notice of appeal with the Patent and Trademark Office. If you asked the board to reconsider your case, you have 30 days from the date of the decision on reconsideration in which to file a notice of appeal with the Patent and Trademark Office. A notice of appeal

must actually reach the Patent and Trademark Office within the 60- or 30-day period. If mailed, the notice should be addressed:

Box 8
U.S. Patent and Trademark Office
Washington, DC 20231
Attn: Office of the Solicitor

A copy of the notice of appeal must also be sent to the clerk of this court.

Boards of Contract Appeals -- You have 120 days after receiving the decision of a Board of Contract Appeals in which to file a notice of appeal with the clerk of this court.

International Trade Commission -- You have 60 days after a determination of the International Trade Commission becomes final to file a notice of appeal with the clerk of this court.

Trial Courts -- You have 30 days from the date of entry of the judgment or order to file a notice of appeal with the clerk of the district court, the Court of International Trade, or the Claims Court. You have 60 days when the government was the other party in one of these courts.

Forms for a petition for review and a notice of appeal are in the Appendix of Forms in the court's Rules of Practice. You should include on the petition or notice the file number of the case when it was in the board, commission or trial court and the date you received notice of the decision or judgment. You should attach a copy of the board's, commission's, or court's opinion to the petition or notice. All papers must be 8 1/2 by 11 inches.

4. *Fees.* -- You are required to pay a docketing fee of $100 to the clerk of this court when you petition for review of, or appeal, a decision of a board or commission. If you appeal a judgment of a trial court, you must pay a docketing fee of $100 and also pay a filing fee of $5, both to the clerk of that trial court when you file a notice of appeal in that court. If the fees have not been paid within 14 days after the case is docketed in this court, the case will be dismissed.

5. *Permission to proceed in forma pauperis; waiving fees.* -- You may qualify to proceed in forma pauperis if the court determines that you are unable to pay the fees. Permission to proceed in forma pauperis means that the filing and docketing fees and certain requirements concerning formal briefs are waived; it does not mean that a free transcript of the hearing or trial will be provided, or that a free lawyer will be appointed, or that the assessment of costs will be waived. You are automatically qualified to proceed in forma pauperis if the district court, Court of International Trade, or Claims Court has granted you that right and not revoked it. Otherwise, you may request to proceed in forma pauperis on a form available from the clerk of this court. You are required to disclose all your financial resources on the form. You must file the form within 14 days of the date of docketing.

6. *Discrimination claims in Merit Systems Protection Board cases.* -- This court does not have jurisdiction to review cases involving bona fide claims of discrimination based on race, sex, age, national origin, or handicap that were raised before the Merit Systems Protection Board. If your case involves such claims, you must proceed in a district court unless you agree to abandon such claims forever. You may waive your discrimination claims on the Federal Circuit Rule 15 (c) form sent to you by the clerk. If you fail to complete and return the form within 14 days after the date of docketing, the clerk will dismiss your petition for review. A discrimination issue raised for the first time in this court does not affect the jurisdiction of the court to decide the issues raised before the Board, and such a discrimination claim will be disregarded.

7. *This court does not conduct new trials or hearings.* -- This court reviews only what a board, commission, or trial court did in your case. You cannot retry the facts before this court. Review is limited to the written record of proceedings that were held in the board, commission, or trial court. You cannot raise in this court matters that you did not present first before the board, commission, or trial court. You must show that the version of the facts accepted by the board or commission is not supported by substantial evidence or that the version of the facts accepted by the trial court is clearly erroneous. If you show that the board, commission, or trial court erred, you must also show that the error materially affected the outcome of your case. Minor procedural errors rarely affect the outcome of a case. Procedural errors are usually deemed waived if not raised first before the board, commission, or trial court. If you are successful before this court, the court may issue a decision in your favor or it may send the case back (remand) for further proceedings before the board, commission, or trial court.

8. *Cases dismissed for lack of jurisdiction or for untimeliness.* -- If the board, commission, or trial court dismissed your case for lack of jurisdiction or because you did not file on time, you must limit your petition for review or appeal to these issues. In that situation, this court will not consider the merits of your case (whether you deserve to win or lose your case on the facts and the law) and, if this court were to reverse the board, commission, or trial court on its jurisdictional or timeliness ruling, your case would be remanded to the board, commission, or trial court to consider the merits. If jurisdiction or timeliness was the basis of the decision you are appealing, you will waste your time and effort, and will unduly burden this court, if you discuss the merits.

9. *Frivolous petitions for review and appeals will be penalized.* -- If you file and proceed with a frivolous petition for review or appeal, you are subject to the imposition of damages, double costs, and attorney fees payable to the other party. "Frivolous" means clearly hopeless and unquestionably without any basis whatever in fact or law. You may require the advice of an attorney in making your decision that your case is not frivolous.

10. *Withdrawing a pro se petition for review or appeal.* -- You may withdraw your pro se petition for review or appeal at any time before this court decides your case. To withdraw your case simply advise the clerk by letter, "I withdraw my case." Serve a copy of your letter on the other party. The Department of Justice will ordinarily consent to the withdrawal of a pro se case

on the condition that each party bear its own costs. This court will ordinarily not assess damages, double costs, or attorney fees for filing a frivolous petition for review or appeal if it is voluntarily withdrawn within 14 days after you receive the other party's brief. Serious consideration should be given to voluntarily withdrawing your case if the other party's brief makes a strong argument that you are pursuing a frivolous case.

11. *Record.* -- If you need access to the original record of the board, commission, or trial proceedings, you must contact the board, commission, or trial court because the original record is not forwarded to this court.

12. *Service of notice of appearance, briefs, appendices, motions, letters, and other documents.* -- You must serve on counsel for the other party (by mail or by personal delivery) a copy of all notices of appearance, briefs, appendices, motions, letters, and other documents you send to the court. Make sure this court's docket number appears on every document. You must serve opposing counsel using the name and address contained on the entry of appearance form filed by that counsel and served on you. The clerk will not file and may return any material that is not accompanied by a certificate from you stating that you have served the other party with a copy of all the material sent to the court.

13. *Informal briefs; petitions for rehearing; motions.* -- You may file an informal brief (original and three copies) on an accelerated schedule, using a form provided by the clerk of this court. You must include an appendix containing, as appropriate, the initial and final decisions of the Merit Systems Protection Board, the final decision of another board or commission, or the judgment and opinion of the trial court. The informal brief is the only permissible substitute for the brief required by the Federal Rules of Appellate Procedure and Federal Circuit Rules. The informal brief with any continuation pages needed for answers that will not fit on the form may not exceed 50 typewritten, double-spaced pages or their equivalent. You may employ a letter to the clerk in replying to an opponent's brief, in requesting a rehearing, or in submitting a motion. Letters may not exceed five typewritten, double-spaced pages or their equivalent. In replying to an opponent's brief, you may not make new arguments that are unrelated to to the arguments in that brief.

14. *Timetable for filing briefs.* --

Informal briefs -- In a petition for review or appeal from a board or commission, you must file an informal brief within 21 days after the certified list is served. In an appeal from a trial court, you must file an informal brief within 21 days after the appeal is docketed. The other party may file either an informal brief within 21 days or a formal brief within 40 days after service of your informal brief. However, if you attempt to serve government counsel using a name and address other than that contained on the entry of appearance served on you, the time for filing the government's informal brief will not begin to run until the government attorney appearing in the case has actually received your brief. You may then file a reply brief in letter form within 10 days after service of the other party's brief.

Formal briefs -- If you elect to file a formal brief, the brief and appendix must comply with the strict requirements of the Federal Rules of Appellate Procedure and the Federal Circuit Rules or the brief and appendix will not be accepted. A formal brief is due 60 days after the certified list is served in board or commission cases or 60 days after the case is docketed in trial court cases. The other party must file a formal brief within 40 days of service of your formal brief. Any reply must be a formal reply brief filed within 14 days of service of the other party's brief.

15. *Oral argument.* -- Oral argument (usually 15 minutes or less) is rarely needed in pro se cases. However, you may request to argue your case before the court, giving reasons why that would aid the court. If you are granted oral argument you must bear your own travel expenses to the court.

16. *Recovery of costs.* -- If you lose before this court, you will normally be responsible for paying the costs of the other party. If you prevail, you will normally have your own costs paid by the other party. "Costs" means the expenses of printing or copying briefs and appendices, and may amount to several hundred dollars. Attorney fees are not costs. If you are responsible for costs, the matter is between you and the other party, and the court will not resolve any dispute between the parties once the costs have been taxed. In appeals from the Patent and Trademark Office, each party bears its own costs on appeal.

17. *Attorney fees.* -- You are not entitled to payment for your own services in pursuing your case pro se, because only an attorney may be awarded attorney fees. Before filing a petition for review or an appeal you may wish to seek a lawyer who might be willing to undertake the case on the contingency that the attorney fees may be payable under the Equal Access to Justice Act.

18. *Change of address.* -- You must file and serve a new notice of appearance if you change your address while your case is pending.

19. *Notice of the court's decision.* -- You will be sent a copy of the court's opinion in your case by mail on the day it is filed with the clerk. If you file a petition for rehearing, it must be received within 14 days of the date of the court's opinion. Untimely petitions for rehearing will be returned. Rehearings are rarely granted.

20. *Additional information.* -- For information, you may call the Clerk's Office at (202) 633-6550 or write to the Clerk, U.S. Court of Appeals for the Federal Circuit, 717 Madison Place, NW., Washington, DC 20439. Collect calls are not accepted.

APPENDIX OF FORMS

Form 1. Notice of Appeal to a Court of Appeals From a Judgment or Order of a District Court

United States District Court for the _____
District of _____
File Number _____

A.B., Plaintiff)
v.) Notice of Appeal
C.D., Defendant)

Notice is hereby given that C.D., defendant above named, hereby appeals to the United States Court of Appeals for the _____ Circuit (from the final judgment) (from the order (describing it)) entered in this action on the _____ day of _____, 19__.

(s) _____

_____
(Address)
Attorney for C.D.

~~**Form 2. Notice of Appeal to a Court of Appeals From a Decision of the Tax Court**~~

Form 3. Petition for Review of Order of an Agency, Board, Commission or Officer

United States Court of Appeals for the _____ Circuit

A.B., Petitioner)
v.) Petition for Review
XYZ Commission, Respondent)

A.B. hereby petitions the court for review of the order of the XYZ Commission (describe the order) entered on _____, 19 __.

_____
Attorney for Petitioner
Address: _____

~~**Form 4. Affidavit to Accompany Motion for Leave to Appeal in Forma Pauperis**~~

Form 4. Motion and Affidavit for Leave to Proceed in Forma Pauperis

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

_____ v _____

No. _____

Motion and Affidavit for Leave to Proceed in Forma Pauperis

Petitioner hereby moves for leave to proceed in forma pauperis in this case and submits the following affidavit in support thereof:

I,_____, am the (Petitioner) (Appellant) in the above-entitled case. In support of my motion to proceed on appeal without being required to pay the docketing fee I state that I am unable to pay the fee because of my poverty; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are the following:

_____

_____

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the docketing fee are true.

1. Are you presently employed? _____

a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

_____

_____

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

_____

_____

2. Have you received within the past 12 months any income from a business, profession, other form of self-employment, rent payments, interest, dividends, retirement, annuity payments, alimony, welfare, social security, disability compensation, workmen's compensation, or any other source? __ If the answer is yes, describe each source of income, and state the amount received monthly from each during the past 12 months.

_____

_____

_____

3. Do you own any cash or have any checking or savings accounts? __ If the answer is yes, state the total amount of cash owned and the average monthly balance in any account.

_____

_____

_____

(continued on next page)

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? __ If the answer is yes, describe the property and state its approximately value.

_____

_____

5. List the persons who you actually support and state your relationship to those persons.

_____

_____

6. Have you ever filed a motion in this court for leave to proceed in forma pauperis in any other appeal? __ If the answer is yes, state the name and docket number of the appeal.

_____

7. Have you retained an attorney to represent you?___

_____ _____

Date Petitioner's Signature

Have this motion and affidavit acknowledged before a notary public or complete the statement in lieu of notarization.

ACKNOWLEDGEMENT

SUBCRIBED AND SWORN TO before me this _____day of _____, 19 _____.

(SEAL)

_____

Notary Public's Signature

STATEMENT IN LIEU OF NOTARIZATION

I declare under penalty of perjury that the foregoing is true and correct.

_____ _____

Date Petitioner's Signature

ORDER OF THE COURT

The motion to proceed in forma pauperis is DENIED. The docketing fee must be paid within 14 days.

_____ _____

Circuit Judge Date

The motion to proceed in forma pauperis is GRANTED. Let the applicant proceed without prepayment of the docketing fee.

_____ _____

Circuit Judge Date

Form 5. Appeal Information Sheet

Federal Circuit Appeal Information Sheet

___ United States District Court for the _____
___ United States Court of International Trade
___ United States Claims Court
___ United States Court of Veterans Appeals

Type of case: _____

v.

Plaintiff(s) *Defendant(s)*

(List all parties. Use asterisk to indicate dismissed or withdrawn parties. Use separate sheet if needed. Explain any discrepancy with caption used on judgment, order or opinion.)

Docket No. _____ Date of Judgment or Order _____

Cross or related appeal? _____ Date of Notice of Appeal _____

Appellant is: ___ Plaintiff ___ Defendant ___ Other (explain) _____

FEES: Court of Appeals Docket Fee Paid? ___ Yes ___ No
U.S. Appeal? ___ Yes ___ No
In forma pauperis? ___ Granted ___ Denied
___ Revoked ___ Pending ___ Never requested

COUNSEL: (List name, firm, address and telephone of lead counsel for each party. Indicate party represented. Use separate sheet if necessary.)

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

COURT REPORTER (Name and telephone): _____

IMPORTANT: Attach copy of opinion or order appealed from. Forward together with copy of notice of appeal and certified docket entries.

Form 6. Entry of Appearance

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

_____ v _____

No. _____

(INSTRUCTIONS: Counsel refer to Federal Circuit Rule 47.3. Pro se petitioners and appellants read paragraphs 1 and 18 of the Guide for Pro Se Petitioners and Appellants. File this form with the clerk and serve it on the principal attorney for each party.)

Please enter my appearance (select one):

___ Pro Se ___ As counsel for: _____
Name of party

I am, or the party I represent is (select one):

___ Petitioner ___ Respondent ___ Amicus Curiae

___ Appellant ___ Appellee ___ Intervenor

As amicus curiae or intervenor, this party supports (select one):

___ Petitioner or appellant ___ Respondent or appellee

All communications with me should be made as follows:

Name: _____

Law Firm (counsel only): _____

Address: _____

City, State, and ZIP: _____

Telephone: ( )_____

Statement to be completed by counsel only (select one):

___ I am the principal attorney for this party in this case and will accept all service for the party. I agree to inform all other counsel for the party in this case of the matters served upon me.

___ I am not the principal attorney for this party in this case.

Date admitted to Federal Circuit bar (counsel only): _____

_____ _____
Date Signature of Pro Se or Counsel

Form 7. Certificate of Interest

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

_____ v _____

No. _____

Counsel for the (appellant) (appellee) (petitioner) (intervenor) (amicus), (name of party: _____), certifies the following (use "None" if applicable; use extra sheets if necessary):

1. The full name of every party or amicus represented by me is:

_____

_____

_____

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:

_____

3. The publicly held affiliates of any corporate party or amicus represented by me are:

_____

_____

_____

_____

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are:

_____

_____

_____

_____ /s/ _____

Date Printed name
Counsel for Appellant, etc.

Form 8. Statement concerning discrimination

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

_____ v _____

No. _____

Petitioner's Statement Concerning Discrimination

(INSTRUCTIONS: Counsel refer to Federal Circuit Rule 15 (c). Pro se petitioners read paragraph 6 of the Guide for Pro Se Petitioners and Appellants. Select only one of the following statements. Do not alter or add to any of the statements. File this statement within 14 days after the date of docketing.)

___ (1) No claim of discrimination by reason of race, sex, age, national origin or handicapped condition has been or will be made in this case.

___ (2) Any claim of discrimination by reason of race, sex, age, national origin, or handicapped condition raised before the employing agency or the Merit Systems Protection Board has been abandoned and will not be raised or continued in this or any other court.

___ (3) The petition seeks review only of the Merit Systems Protection Board's dismissal of the case for lack of jurisdiction or for untimeliness.

Also answer the following: Have you filed a discrimination case in a United States district court? ___ In the Equal Employment Opportunity Commission? ___ If so, identify each case. Use extra sheets if needed.

_____ _____

Date Petitioner's or counsel's signature

Mail the original of this form to:

Clerk
United States Court of Appeals
for the Federal Circuit
717 Madison Place, NW.,
Washington, DC 20439

Serve a copy of this form by mail on the respondent's attorney using the name and address on the notice of appearance form that was served on you by that attorney. Pro se petitioners attach a copy of that notice of appearance form (noting thereon the date you served the respondent) to the original of this form as your proof of service. Counsel attach proof of service.

Form 9. Informal Brief (MSPB or Arbitrator Cases)

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

_____ v _____

No. _____

Informal Brief of Petitioner

Read the Guide for Pro Se Petitoners and Appellants before completing this form. Attach a copy of the initial decision of the administrative judge and the decision, if any, of the Merit Systems Protection Board (MSPB) or a copy of the Arbitrator's decision. Answer the following questions as best you can. Your answers should refer to the MSPB decisions or the Arbitrator's decision where possible. Use extra sheets if needed.

1. Has the petitioner ever had another case in this court? ___ In a United States District Court? ___ In the Equal Employment Opportunity Commission? ___ If so, identify each case.

2. Did the MSPB or the Arbitrator incorrectly decide or fail to take into account any facts? ___ If so, what facts? (Refer to paragraph 7 of the Guide.)

3. Did the MSPB or the Arbitrator apply the wrong law? ___ If so, what law should be applied?

(continued on next page)

4. Did the MSPB or the Arbitrator fail to consider important grounds for relief? ___ If so, what grounds?

5. Are there other reasons why the MSPB's or the Arbitrator's decision was wrong? ____If so, what reasons?

6. What action (relief) do you want the court to take in this case?

7. Do you want to argue before the court in person? ___ What are the reasons why argument will aid the court? (Refer to paragraph 15 of the Guide.)

_____ _____

Date Petitioner's signature
(Notary not required)

Mail an original and three copies of the informal brief and attachments to:

Clerk
U.S Court of Appeals
for the Federal Circuit
717 Madison Place, NW.,
Washington, DC 20439

Serve a copy of the informal brief and attachments by mail on the respondent's attorney using the name and address on the notice of appearance form that was served on you by that attorney. Attach a copy of that notice of appearance form (noting thereon the date you served the respondent) to the original of your brief as your proof of service.

Form 10. Informal Brief (District Court, Court of International Trade, Claims Court, or Court of Veterans Appeals Cases)

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

_____ v _____

No. _____

Informal Brief of Appellant

Read the Guide for Pro Se Petitoners and Appellants before completing this form. Attach a copy of the final decision or order of the trial or appeals court (District Court, Court of International Trade, Claims Court, or Court of Veterans Appeals). Answer the following questions as best you can. Your answers should refer to the decision or order you are appealing where possible. Use extra sheets if needed.

1. Has the appellant ever had another case in this court? ___ If so, state the name and number of each case.

2. Did the trial court incorrectly decide or fail to take into account any facts? ___ If so, what facts? (Refer to paragraph 7 of the Guide.)

3. Did the trial court apply the wrong law? ___ If so, what law should be applied?

(continued on next page)

best copy available

4. Did the trial court fail to consider important grounds for relief? ___ If so, what grounds?

5. Are there other reasons why the trial court's decision was wrong? ___ If so, what reasons?

6. What action (relief) do you want the court to take in this case?

7. Do you want to argue before the court in person? ___ What are the reasons why argument will aid the court? (Refer to paragraph 15 of the Guide.)

_____ _____

Date Appellant's signature
(Notary not required)

Mail an original and three copies of the informal brief and attachments to:

Clerk
U.S Court of Appeals
for the Federal Circuit
717 Madison Place, NW.,
Washington, DC 20439

Serve a copy of the informal brief and attachments by mail on the appellee's attorney using the name and address on the notice of appearance form that was served on you by that attorney. Attach a copy of that notice of appearance form (noting thereon the date you served the appellee) to the original of your brief as your proof of service.

Form 11. Informal Brief (Board of Contract Appeals, Board of Patent Appeals and Interferences, Trademark Trial and Appeal Board, and International Trade Commission Cases)

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

_____ v _____
No. _____

Informal Brief of Appellant

Read the Guide for Pro Se Petitoners and Appellants before completing this form. Attach a copy of the final decision or order of the board (Board of Contract Appeals, Board of Patent Appeals and Interferences, Trademark Trial and Appeal Board) or the International Trade Commission. Answer the following questions as best you can. Your answers should refer to the decision or order of the board or commission where possible. Use extra sheets if needed.

1. Has the appellant ever had another case in this court? ___ If so, state the name and number of each case.

2. Did the board or commission incorrectly decide or fail to take into account any facts? ___ If so, what facts? (Refer to paragraph 7 of the Guide.)

3. Did the board or commission apply the wrong law? ___ If so, what law should be applied?

(continued on next page)

4. Did the board or commission fail to consider important grounds for relief? ___ If so, what grounds?

5. Are there other reasons why the board's or commission's decision was wrong? ___ If so, what reasons?

6. What action (relief) do you want the court to take in this case?

7. Do you want to argue before the court in person? ___ What are the reasons why argument will aid the court? (Refer to paragraph 15 of the Guide.)

_____ Date

_____ Appellant's signature (Notary not required)

Mail an original and three copies of the informal brief and attachments to:

Clerk
U.S Court of Appeals
for the Federal Circuit
717 Madison Place, NW.,
Washington, DC 20439

Serve a copy of the informal brief and attachments by mail on the appellee's attorney using the name and address on the notice of appearance form that was served on you by that attorney. Attach a copy of that notice of appearance form (noting thereon the date you served the appellee) to the original of your brief as your proof of service.

Form 12. Sample Brief Cover (MSPB Cases)

PETITIONER'S BRIEF AND JOINT APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

88-3000

JOANNE S. DOE,

Petitioner,

v.

DEPARTMENT OF THE NAVY,

Respondent.

PETITION FOR REVIEW OF A DECISION OF THE
MERIT SYSTEMS PROTECTION BOARD

MARY E. SMITH
SMITH & JONES
789 Oak Street
Norfolk, VA 23508
(804) 440-4289

Attorney for Petitioner

January 2, 1989

Form 13. Sample Brief Cover (District Court Cases)

BRIEF FOR CROSS APPELLANT XYZ CO.

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

88-1930, -1977, -1998

ABC CORPORATION and DEF COMPANY, INC.,

Plaintiffs,

G & H ENTERPRISES,

Plaintiff-Appellant,

v.

UVW LTD. and XYZ CO.,

Defendants/Cross-Appellants.

APPEAL FROM A DECISION OF THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
JUDGE ROBERT E. WASHINGTON, JR.

OLIVER L. WHITE
WHITE, BLACK & DUNN
123 Main Street
Rock Valley, IA 51247
(712) 476-2107

Attorney for Cross Appellant
XYZ CO.

Of counsel:
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6240 Market Street
Des Moines, IA 50333
(712) 597-1000

January 2, 1989